

HON'BLE SRI JUSTICE T.AMARNATH GOUD

C.M.A. No.2955 of 2001

JUDGMENT:

This appeal is filed by the appellant-claimant aggrieved by the Order and Decree dated 12-06-2001 passed in O.P.No.292 of 1998 by the II Additional Chief Judge, City Civil Court, Hyderabad (for short, the Trial Court).

2. Brief facts of the case are that on 20-12-1997 at 2.00 pm when the claimant was playing in the play ground at school premises, the driver of the bus bearing No.KRV 5909 drove it with high speed, rashly and negligently and ran over his body and as such, he sustained abdominal injuries causing rupture and damage to his intestine bladder, urethra and penis and fracture injuries. Hence, he filed the claim petition claiming compensation of Rs.3.00 lakhs for the injuries sustained by him against the respondent Nos.1 and 2 who are the owner and insurer of the crime vehicle.

3. In the claim petition, the 2nd respondent-insurer filed its counter denying the averments of the claim petition and contended that the amount claimed is excessive and prayed to dismiss the claim petition.

4. After considering the oral and documentary evidence on record, the Trial Court came to the conclusion that the accident occurred due to the rash and negligent driving on the part of the driver

of the crime vehicle only. So far as granting of compensation is concerned, the Trial Court granted an amount of Rs.1,55,000/- i.e. Rs.90,000/- towards disability, pain and suffering; Rs.50,000/- towards Medical expenses and treatment; Rs.10,000/- towards attendant charges and Rs.5,000/- towards transportation, extra-nourishment and damages to clothes. Accordingly, it partly allowed the claim petition granting compensation of Rs.1,55,000 /- with interest at 9% per annum through out.

5. Dissatisfied with the quantum of compensation, the appellant/claimant filed the present appeal, seeking for enhancement of the compensation.

6. Heard the learned counsel for the appellant-claimant and the learned Standing Counsel for the 2nd respondent-insurer.

7. Learned counsel for the appellant-claimant contends that the claimant is a student aged about 6 years at the time of accident; that he is only one son to his father who is working as a teacher; that due to the injuries sustained by him, he became impotent; that he was hospitalized three times on different occasions; and he has been suffering from loss of amenities of life and prospects of marriage. In support of his contention, he relied upon the decisions of the Supreme Court in **G.Ravindranath v. E.Srinivas and another**¹ and **Kishan**

¹ 2013 ACJ 213

Gopal and another v. Lala and others ². Hence, he prayed for fair compensation.

8. Sri Ramachandra Reddy Gadi, learned Standing Counsel for the 2nd respondent, strenuously contended that it is not a fit case seeking any enhancement; that while awarding compensation, merits of each case has to be looked into the light of the facts as stated in the affidavit; that sine there is no proper evidence placed before the Trial Court seeking enhancement; that neither the oral nor documentary evidence is adduced by the claimant to prove the treatment for seeking enhancement and thus, the appeal needs to be dismissed.

9. As per the medical evidence, he was under treatment for the surgeries and was hospitalized on three spells in Prameela Nursing Home, Osmania General Hospital and NIMS, Hyderabad. In support of the same, the claimant filed Exs.A-3 to A-6 to prove the treatment which cannot be denied and therefore the same has to be accepted. Further, he was in the hospital for almost three months as in-patient and as per the evidence of P.W.4, doctor, it is the rarest of the rare in worst cases in the urology medicine; that his entire urology urethra system was damaged including his penis and leads to impotency; and that he is unfit for marital life. In such circumstances, the trial Court has awarded compensation as referred to supra.

² 2013 (6) ALD 59 (SC)

10. Further, as contended by the learned counsel for the claimant and in the light of the judgment of the Apex Court in **Kishan Gopal** (2 supra), wherein the Apex Court observed:

“18. Further, the deceased boy, had he been alive would have certainly contributed substantially to the family of the appellants by working hard. In view of the aforesaid reasons, it would be just and reasonable for us to take his notional income at Rs.30,000/-.”

Further, 40% future prospects as per **National Insurance Company Limited Vs. Pranay Sethi**³, which comes to Rs.42,000/- (Rs.30,000/- + Rs.12,000/-). Since the injured claimant is six years at the time of accident, by applying the legal principles laid down in the case of **Smt. Sarla Varma v. Delhi Transport Corporation**⁴, the multiplier ‘15’ can be applied. Thus, the total compensation comes to Rs.6,30,000/- (Rs.42,000/- x 15) towards loss of disability.

11. Further, the trial Court while granting disability did not grant compensation separately towards pain and suffering. Hence, I feel it would be just and proper in awarding Rs.1,00,000/- separately towards pain and suffering.

12. Further, the trial Court also while granting transportation and extra-nourishment did not grant compensation separately. Hence, I feel it would be just and proper in awarding Rs.20,000/- and Rs.50,000/- each towards transportation and extra-nourishment, totaling Rs.70,000/-.

³ 2017 (6) 170 (SC)

⁴ (2009) 6 S.C.C. 121

13. Further, the trial Court granted Rs.10,000/- towards attendant charges. Considering the number of times the claimant hospitalized within a span of three months, I feel granting Rs.25,000/- towards attendant charges is reasonable.

14. Further the trial Court ignored in granting compensation towards loss of amenities and future medical expenses as per Exs.A-8 and A-9. Hence, the claimants are granted an amount of Rs.50,000/- each towards both heads, totaling Rs.1,00,000/-.

15. Further, as contended by the learned counsel for the claimant, the claimant is suffered from loss of marriage prospects. As per the decision of the Supreme Court in **Ravindranath** (1 supra), the claimant is entitled to be granted Rs.4.00 lakhs towards loss of marriage prospects. Hence, the claimant is granted Rs.4.00 lakhs towards loss of prospects of marriage.

16. A sum of Rs.50,000/- awarded by the Trial Court under the head of medical expenses shall remain unchanged.

17. Therefore, the claimant is granted total compensation of Rs.13,75,000/- under various heads as follows:

Sl.No.	Name of Head	Awarded by Trial Court	Awarded by this Court
01.	Disability	Rs.90,000/-	Rs.6,30,000/-
02.	Medical expenses and treatment	Rs.50,000/-	Rs.50,000/-
03.	Attendant charges	Rs.10,000/-	Rs.25,000/-
04.	Transportation + extra-nourishment + damages to the clothes	Rs. 5,000/-	Rs.70,000/-
05.	Pain and suffering	Nil	Rs.1,00,000/-
06.	Loss of amenities	Nil	Rs.50,000/-

07.	Future medical expenses	Nil	Rs.50,000/-
08.	Loss of marriage prospects	Nil	Rs.4,00,000/-
Total		Rs.1,55,000/-	Rs.13,75,000/-

18. In the result, the appeal is allowed by enhancing the compensation awarded by the Trial Court from Rs.1,55,000/- to Rs.13,75,000/- (Rupees Thirteen Lakhs Seventy Five Thousand only). The enhanced amount of compensation shall carry interest at 7.5% per annum. The appellant/claimant is directed to pay deficit Court Fee. The respondents are directed to deposit the enhanced amount jointly and severally along with proportionate costs and interest within two months from the date of receipt of a copy of this order. On such deposit, the appellant/claimant is permitted to withdraw the entire amount. No costs.

19. Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE T.AMARNATH GOUD

Date: 20.09.2019
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