

HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.2491 OF 2012

JUDGMENT:

Aggrieved by the order and decree, dated 19.03.2012, passed by the learned III Additional Chief Judge, City Civil Court, Hyderabad, in O.P. No.349 of 2011, the appellant preferred the present appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'Act') seeking enhancement of the compensation.

2. For the sake of convenience, the parties herein are referred to as they were arrayed before the Court below.

3. Brief facts that led to filing of the claim petition are that on 22.05.2010 when the petitioner was proceeding on his scooter bearing registration No.AP-16-L-9936 slowly on the left side of the road at Jeedimetla and when he reached near Godrej junction, a bus bearing registration No.AP-27-W-9569 driven by its driver came at high speed in a rash and negligent manner and hit the petitioner's vehicle from behind, due to which, the petitioner fell down and sustained multiple fractures to head and other blunt injuries all over the body. Immediately the petitioner was shifted to Prime Hospital, Kukatpally, Hyderabad, for treatment; that the police Kukatpally also registered a case in Crime No.625 of 2010 against the driver of the bus; that due to the accident, the petitioner sustained permanent disability and, hence, he filed O.P.No.349 of 2011 claiming compensation of Rs.4,00,000/- against respondents Nos.1 and 2, the owner and insurer of the aforesaid bus.

4. Respondent No.1, owner of the bus remained *ex parte* before the Court below.

5. Respondent No.2 - Insurer of the vehicle filed counter denying the manner in which the accident had occurred; that the accident might have occurred due to contributory negligence; that the petitioner has not sustained any permanent disability and finally requested to dismiss the claim petition.

6. The Court below framed three issues for trial. During inquiry PWs.1 to 3 were examined and got marked Exs.A.1 to 11 on behalf of the petitioner. Whereas, no oral evidence was let in, but Ex.B-1, copy of insurance policy was marked on behalf of respondent No.2.

7. After hearing both sides and analyzing the evidence on record, the Court below gave a finding that the accident had occurred due to rash and negligent driving of driver of the bus and awarded a sum of Rs.1,59,143/- as compensation with interest at the rate of 6% per annum thereon from the date of petition till the date of deposit.

8. Dissatisfied with the quantum of amount awarded by the Court below, the petitioner preferred the present appeal.

9. Sri K.Hari Mohan Reddy, learned counsel for the petitioner would submit that what was awarded by the Court below is very low and the Court below ought to have awarded more compensation keeping in view the evidence let in by the petitioner both oral and documentary and, therefore, requested to award compensation as claimed by the petitioner.

10. On the other hand, Smt B.L.Prasuna, learned Standing Counsel for respondent No.2 - Insurer would submit that there is no infirmity in the order passed by the Court below as the Court below has gone through the entire evidence on record; and that the Court below has dealt with each and every head and arrived at the sums to which the petitioner was entitled, as such, requested to dismiss the appeal.

11. There is no dispute with regard to causing of accident and sustaining of injuries by the petitioner. The only dispute to be resolved in this case is as to quantum of compensation to which the petitioner is entitled. The petitioner claimed compensation of Rs.4,00,000/- under various heads. As against the said amount, the Court below granted a sum of Rs.1,59,143/- viz., Rs.50,000/- towards permanent disability; Rs.54,143/- towards medical expenses; Rs.50,000/- towards pain and suffering; and Rs.5,000/- towards extra-nourishment and transportation.

12. The contention of learned counsel for the petitioner is that though the petitioner was working as glass fitting work and earning an amount of Rs.20,000/- per month, the Court below did not consider the same on the ground that petitioner had not filed any proof of his employment prior to the date of accident or his inability to continue in the said employment after the accident.

13. Admittedly, the petitioner was doing glass fitting work at the time of accident and in Ex.A.1-First Information Report also his occupation is mentioned as glass fitting worker. Learned counsel for the petitioner also placed reliance on a decision of the Apex Court reported in **Jagdish**

v. Mohan and others¹, whereunder the Apex Court considered the income of the appellant therein as Rs.6,000/- per month as he is a skilled carpenter and self-employed. In the case on hand, since the petitioner is working as glass fitting worker and he is a self-employed, fixing the monthly income at Rs.6,000/- is reasonable.

14. The Court below, in spite of producing Ex.A.11-prescription issued by P.W.3 stating that the petitioner had 20% deficit in his mental ability, fixed an amount of Rs.50,000/- towards permanent disability without any basis. In the facts and circumstances of the case, this Court feels that it would be appropriate to take into consideration the permanent disability of the appellant at 20%. The petitioner is entitled to addition of 40% towards future prospects. As the income of the appellant was taken at Rs.6,000/- per month, his annual income comes to Rs.72,000/-. If addition of 40% towards future prospects is added, the annual income comes to Rs.1,00,800/- (72,000/- + 28,800/-). The multiplier for the age of the petitioner is '17'. Hence, the compensation under the head 'permanent disability' comes to Rs.3,42,720/- (1,00,800/- X 17 X 20%).

15. As far as the other amounts awarded by the Court below are concerned, viz., Rs.54,143/- towards medial expenses, Rs.50,000/- towards pain and suffering and Rs.5,000/- towards extra-nourishment and transportation, on perusal of the order of the Court below, it is to be noted that the Court below has well-considered while awarding the said amounts and no infirmity could be found, as such, the same are confirmed. Thus, this Court is enhanced the compensation to Rs.4,51,863/- from Rs.1,59,143/-.

¹ 2018 ACJ 1011

16. Accordingly, the appeal is allowed and the order and decree, dated 19.03.2012 passed by the Court below in O.P. No.349 of 2011 on the file III Additional Chief Judge, City Civil Court, Hyderabad, is modified enhancing the compensation to Rs.4,51,863/- (Rupees Four lakhs Fifty one thousand eight hundred and sixty three only) from 1,59,143/- awarded by the Court below. The enhanced amount of compensation shall carry interest @ 7.5% per annum from the date of petition till realization. The enhanced amount shall be paid to the petitioner on payment of deficit Court fee as the petitioner paid Court fee claiming an amount of Rs.4,00,000/-.

Miscellaneous petitions, if any, pending in this appeal shall stand closed. There shall be no order as to costs.

AUGUST 02, 2019
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T. AMARNATH GOUD, J

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Date:02.08.2019

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