

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.162 OF 2013

JUDGMENT:

This appeal is filed by the appellant-claimant aggrieved by the Order and Decree dated 28.08.2012 in OP.No.1344 of 2009 on the file of the I Additional Metropolitan Sessions Judge-cum-XV Additional Chief Judge, Hyderabad (for short, the trial Court).

2. The brief facts of the case are that on 01.03.2009 at about 3.00 pm., while the appellant was riding his motorcycle bearing No.AP28AU 8186 from his residence at Khajiguda to Film Nagar, and when he reached near Ramanaidu Studio, one lorry bearing No.AP28X 1427 came in a rash and negligent manner with high speed and dashed the motorcycle of the appellant, as a result of which, the appellant sustained multiple fracture and other injuries. The appellant filed aforesaid OP against respondent Nos.1 and 2, the owner and the insurer of aforesaid lorry, respectively, claiming compensation of Rs.9,00,000/- for the injuries sustained by him.

3. Before the Tribunal, respondent No.1 remained *ex parte*. Respondent No.2 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 Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the

lorry and awarded total compensation of Rs.4,29,400/- with interest @ 7.5% per annum. Dissatisfied with the quantum of compensation, the appellant filed the present appeal, seeking enhancement of the same.

5. Sri K.Hari Mohan Reddy, learned counsel for the appellant, submitted that the Tribunal took the income of the appellant at Rs.4,000/- per month, which is meager. The Hon'ble Supreme Court in **Ramachandrappa Vs. Royal Sundaram Alliance Insurance Co.Ltd.**¹, fixed the income of the injured therein, who was working as Coolie, at Rs.4,500/- per month, and as we are in the year 2019, it would be reasonable to fix the income of the appellant at Rs.7,500/- per month. He further submitted that the appellant examined P.W.2, the doctor who treated the appellant, deposed that he has issued Ex.A.6-disability certificate assessing the disability of the appellant at 25% and therefore, the disability of the appellant has to be taken into consideration. He further submitted that as per the decision of the Hon'ble Supreme Court in **Jagdish V. Mohan**², the appellant is entitled to 40% of future prospects. He further submitted that due to the fracture injuries and other injuries, the appellant was not in a position to attend his works for a period of two months and hence, he is entitled to loss of earnings for two months. He also sought to enhance the compensation under the heads of loss of amenities and pain and suffering.

¹ (2011) 13 SCC 236

² (2018) 4 SCC 571

6. Sri Ramachandra Reddy Gadi, learned Standing Counsel for respondent No.2 submitted that as the disability certificate was not issued by P.W.2, his evidence with regard to assessment of disability cannot be taken into consideration and hence, the Tribunal passed a well reasoned order by considering the evidence on record and sought to dismiss the appeal.

7. P.W.2, the doctor who treated the appellant, issued disability certificate Ex.A.6, assessing the disability of the appellant at 25% and hence, I am inclined to take into consideration the disability of the appellant at 25%. As rightly contended by the learned counsel for the appellant, the appellant is entitled to 40% future prospects as per **Jagdish's** case (supra). Since the appellant did not file any evidence to prove his income, as per **Ramachandrappa's** case (supra), I am inclined to take the income of the appellant at Rs.4,500/- per month. As the appellant was aged about 35 years at the time of accident, the appropriate multiplier is '16'. Hence, the compensation under the head 'permanent disability' comes to Rs.3,02,400/- {Rs.6,300/- (Rs.4,500/- + 40%) X 12 X 16 X 25%}. In the facts and circumstances of the case, I am inclined to grant loss of earnings for two months, which comes to Rs.9,000/-, Rs.4,000/- towards extra-nourishment and Rs.10,000/- towards loss of amenities. The Tribunal awarded a sum of Rs.36,000/- for three fracture injuries, which are enhanced to Rs.60,000/- (Rs.20,000/- for each fracture). The other amounts granted by the

Tribunal need no interference and the same are confirmed.

Therefore, the total compensation would be as under:

Sl.No.	Name of Head	Awarded by Tribunal	Awarded by this Court
01.	Medical bills	Rs.3,45,000/-	Rs.3,45,000/-
02.	Disability	Rs.38,400/-	Rs.3,02,400/-
03.	Fractures	Rs.36,000/-	Rs.60,000/-
04.	Attendant charges	Rs.5,000/-	Rs.5,000/-
05.	Transportation	Rs.5,000/-	Rs.5,000/-
06.	Loss of income	---	Rs.9,000/-
07.	Extra nourishment	---	Rs.4,000/-
	Loss of amenities	---	Rs.10,000/-
TOTAL		Rs.4,29,000/-	Rs.7,40,400/-

8. In the result, the Motor Accident Civil Miscellaneous Appeal is allowed enhancing the compensation amount awarded by the Tribunal from Rs.4,29,000/- to Rs.7,40,400/-. The enhanced amount shall carry interest @ 7.5% per annum from the date of claim petition till realization. Miscellaneous petitions pending, if any, shall stand closed. No costs.

T.AMARNATH GOUD, J

Date: 04.09.2019
TJMR