THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A.No.26 of 2013

JUDGMENT:

The appellant-claimant filed this appeal challenging the Award dated 21.05.2012 passed in O.P.No.1681 of 2009 by the Chairman, Motor Accident Claims Tribunal-cum-II Additional Chief Judge, City Civil Courts, Hyderabad, whereby and whereunder the Tribunal awarded compensation of Rs.6,13,000/- as against the claim of Rs.12,00,000/- for the injuries sustained by the claimant in the motor vehicle accident occurred on 25.04.2009.

2. Heard. Perused the record.

3. In this case, there is no dispute with regard to manner of accident and nature of injuries sustained by the injured in the said accident. The appellant-claimant is only aggrieved by the quantum of compensation awarded by the Tribunal. Hence, there is no necessity to probe into other aspects except the quantum of compensation.

4. Learned counsel for the appellant-claimant mainly contends that the Tribunal has taken the earnings of the injured on lower side, wrongly taken the age of the injured and also wrongly applied the multiplier. He further contends that the amounts awarded by the Tribunal under the heads 'pain and suffering', 'medical expenses' and 'permanent disability' are on lower side. The Tribunal has not awarded any amounts towards 'loss of amenities', 'future prospects', 'loss of earnings during the period of treatment' and 'transportation, attendant charges and

extra nourishment'. He further contends that the percentage of disability suffered by the injured was wrongly taken by the Tribunal. Hence, he prayed for enhancement of the compensation accordingly.

5. Per contra, learned counsel for the respondent-Insurance Company contends that the Tribunal passed a well considered order based on the material available on record and the same warrants no interference of this Court.

6. As seen from the impugned award, the Tribunal granted Rs.75,000/- towards pain and suffering and nervous shock, Rs.2,50,000/- towards medical expenditure and Rs.2,88,000/- towards loss of income due to permanent disability, thus, the Tribunal granted the total compensation of Rs.6,13,000/-.

7. In ***Ankur Kapoor v. Oriental Insurance Co. Ltd.***[1], the Apex Court while dealing with a case pertaining to 22 years aged person who passed 10+2 and obtained several Diplomas related to Sea Courses and a trainee of Merchant Navy in a Limited Company, awarded Rs.3,00,000/- towards pain, agony and trauma and Rs.3,00,000/- towards loss of amenities (including loss of marriage prospects) and Rs.3,00,000/- towards loss of expectation of life. In the case on hand also, appellant-injured was aged about 20 years at the time of the accident and studying B.Tech-II year. As seen from the material on record, injured was treated as in-patient in Apollo Hospital from 25.04.2009 and discharged on 06.05.2009. Thereafter also he took treatment as

[1] 2018 ACJ 547

out-patient. Considering these circumstances and in view of the ratio laid down by the Apex Court in ***Ankur Kapoor (1 supra),*** this Court deems fit to grant an amount of **Rs.1,50,000/-** towards pain and suffering as against the amount awarded by the Tribunal of Rs.75,000/-.

8. The Tribunal granted Rs.2,50,000/- towards medical expenses as against the claim of Rs.4,42,445/-. The Tribunal has considered only Exs.A.10, A.11 and A.12-documents while granting compensation towards medical expenses. The Tribunal has not assigned any cogent reasons for not considering the medical bills under Exs.A.9 for Rs.21,131/-, Ex.A.10 for Rs.1,40,000/-, Ex.A.1,07,000/- and Ex.A.12 for Rs.97,314/-. The above bills were issued by the hospitals where the injured was treated and the exhibits were marked through PWs 2 to 4, the Doctors and the Manager, Billing Department of the hospital, respectively. This Court finds no reason to discard the amounts claimed by the injured. Hence, the amount granted by the Tribunal towards medical expenditure is enhanced to **Rs.3,65,445/-**.

9. The Tribunal has considered the notional income of the injured at Rs.6,000/- per month and after applying the multiplier '16', an amount of Rs.2,88,000/- was awarded by the Tribunal towards 25% of the permanent disability. In ***B.Ramulamma vs. Venkatesh Bus Union***[2] the Division Bench of this Court considered the minimum income of B.E. graduate at Rs.12,000/-

[2] 2011 ACJ 1702

per month. Further, as per the decision of the Apex Court in ***Sarla Verma vs. Delhi Transport Corporation***[3], the multiplier applicable in the present case would be '18' as the injured was aged about 20 years at the time of accident. According to the appellant, though he suffered 30% disability, Tribunal has taken the disability only at 25%, on the ground that the Disability Certificate was not issued by Medical Board and P.W.2-Doctor is not a member of Medical Board. In ***Charan Singh vs. G.Vittal Reddy***[4], Division Bench of this Court held that any qualified doctor can assess the loss of disability vis-à-vis earning capacity and it is not necessary that he should be the same doctor who treated the injured. Again, in ***Syed Saleem vs. Abdul Shukur***[5], this Court held that non-examination of doctor who actually treated claimants is not fatal to the case of the claimants. Evidence of qualified doctor with regard to certification of disability sustained by claimants is to be accepted, though he has not actually treated them, as he is a qualified doctor. Coming to the case on hand, as seen from the evidence of P.W.2-Doctor, he deposed before the Tribunal that the injured suffered 30% permanent partial disability due to the grievous fracture injuries suffered by him. Though Ex.A.15 was not issued by P.W.2, he being a qualified doctor, Ex.A.15 can safely be relied upon in assessing the disability suffered by the injured in view of the ratio laid by this Court in ***Charan Singh (4 supra)*** and ***Syed Saleem (5 supra)***. That apart, as per the ratio laid down by the Apex Court in ***National***

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[3] 2009 (6) SCC 121
[4] 2003 (4) ALD 183 (DB)
[5] 2007 (1) ALD 382

Insurance Company Limited vs. Pranay Sethi and others[6], the injured is entitled for future prospects @ 40% i.e. Rs.4,800/- (Rs.12,000/- X 40%) per month. In that event, the compensation towards 30% permanent & partial disability (including loss of future prospects) comes to **Rs.10,88,640/-** [(Rs.12000+Rs.4,800/-) X 12 X 18] X 30%.

10. Insofar as the claim of the appellant towards compensation towards future medical expenses (surgery) is concerned, discharge summary is silent about it. Further, Ex.A.14-Estimation of Rs.2,15,000/- for future operation issued by the Billing Department appears to be very vague and the same does not contain the counter signature of the Doctor nor any reference of Doctor is indicated in the said estimation. In that view of the matter and since the discharge has taken place in the year 2009 and after lapse of ten years, this Court is not inclined to award any amount towards future medical expenses in the absence any convincing evidence in that regard.

11. The Tribunal has not awarded any amounts towards Transportation charges, extra nourishment, attendant charges and loss of marriage prospects. It is contended by the appellant's counsel that due to the injuries sustained by him in the accident, till date the injured has to remain un-married. Hence, this Court feels it just and apt to award a sum of **Rs.1,50,000/-** towards loss of marriage prospects. As the injured was in hospital for about two months for medical care and treatment, it would be justified to

[6] 2017 Law Suit (SC) 1093

grant **Rs.5,000/-** towards transportation charges, **Rs.5,000/-** towards extra nourishment and **Rs.6,000/-** towards attendant charges. Thus, in all, the appellant is entitled for Rs.17,70,085/-.

12. Though the compensation claimed by the appellant-claimant before the Tribunal is only Rs.12,00,000/-, in view of the decision of the Hon'ble Supreme Court in ***Nagappa vs. Gurudayal Singh and others***[7], there is no restriction in M.V. Act that the compensation should be awarded only upto the claim made by the claimants. However, the appellant-claimant shall pay the difference of Court Fee for the excess amount of compensation granted i.e.Rs.5,70,085/-.

13. Accordingly, the appeal is allowed enhancing the compensation awarded by the Tribunal of Rs.6,13,000/- to Rs.17,70,085/- along with interest @ 7.5% per annum as awarded by the Tribunal. The respondents shall deposit the remaining compensation, along with proportionate interest and costs, to the credit of the O.P. before the Tribunal, within a period of four weeks from the date of receipt of copy of this order. On such deposit, the appellant-claimant is permitted to withdraw the entire amount, subject to payment of excess Court fee.

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

T. AMARNATH GOUD, J

14.08.2019
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[7] (2003) 2 SCC 274