

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA.No.1050 of 2005

JUDGMENT:

Having dissatisfied, with the award of Rs.6,01,722/- as compensation for the injuries sustained by the petitioner in a road accident, by the award and decree dated 01-02-2005 in O.P.No.430 of 1999 on the file of the Chairman, Motor Accident Claims Tribunal-cum-Additional District Judge, Nizamabad (for short, 'the Tribunal'), as against the claim of Rs.10,00,000- the petitioner – claimant preferred the instant appeal under Section 173 of the Motor Vehicles Act, seeking enhancement of compensation.

The appellant herein, who is the injured, is the petitioner, while respondents 1 and 2 herein were respondents 1 and 2 respectively, in the original petition.

For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

The factual background of the case in brief is that on 29-08-1998 the petitioner was proceeding towards Degloor from Madnoor on his bicycle, when he reached infront of Govind Oil Mill, in the outskirts of Madnoor at

about 6.30 pm, then one lorry bearing No.AP-26/T-7657 driven by its driver at high speed, in a rash and negligent manner came from Degloor side and dashed the bicycle of the petitioner. Due to which, the petitioner sustained head injury and also suffered fracture of occipital bone, scalp haematoma and injuries to the tongue. The petitioner was shifted to Degloor hospital, from there to Nizam's Institute of Medical Sciences, Hyderabad. From the date of accident, the petitioner is unconscious, underwent major operation to head. The petitioner was also affected paralysis to his right side parts, lost memory, unable to talk due to injury to tongue and got permanent disability. Prior to the accident, petitioner was permanent employee of Minor Irrigation, Sub-Division, Degloor as cleaner and was earning Rs.3500/- per month and used to contribute his earnings to his family. The petitioner has three daughters. Since he became insane, the OP is filed through the wife the petitioner by name Smt.Noorjaha Begum. The petitioner incurred Rs.1,50,000/- for his treatment. The accident took place due to rash and negligent driving of the driver of the lorry bearing No.AP-26/T-7657. Therefore, respondents 1 and 2 being the owner and insurer of the

said lorry jointly and severally liable to pay compensation of Rs.10,00,000/-.

The 1st respondent who is the owner of the lorry remained exparte before the Tribunal. The 2nd respondent filed written statement denying the averments of the petition, manner of accident, age, occupation and income of the petitioner, the injuries said to have been received by him and the alleged expenditure incurred for his treatment. It is further contended that lorry was not involved in the accident and the petitioner himself had fell down from his bicycle by riding the same rashly and negligently. The 2nd respondent denied that the person who drove the vehicle at the material point of accident was having valid driving licence to drive such vehicle and that the vehicle was road worthy to ply. The owner of the lorry bearing No.AP-26/T-7657 has not reported the matter of accident to the 2nd respondent-company. It is further contended that the quantum of compensation claimed by the petitioner under various heads is excessive, not supported by documents. The driver of the lorry is also necessary party to the OP inspite of that he was not made party.

On the basis of above pleadings, the following issues are settled for trial:

1. Whether the petitioner is entitled to compensation sought for?
2. To what relief the petitioner is entitled to?

Initially the petition is filed claiming compensation of Rs.5,00,000/-. Subsequently, the petitioner filed IA.No.3835 of 2002 to enhance the claim to Rs.10,00,000/- and the same is allowed on 20-02-2003. Subsequently, the 2nd respondent filed additional written statement denying that petitioner was admitted in the hospital twice and incurred expenditure towards medicines and transport and got permanent disability.

After considering the evidence of PWs 1 to 3 examined on behalf of petitioner and Ex.A-1 to A-53 and Ex.B1 copy of policy marked on behalf of 2nd respondent-company, granted an amount of Rs.6,01,722/- out of claim of Rs.10.00 lakhs. Against the same, the present appeal is filed.

Learned counsel for the appellant submits that as per the judgment of **Sarla Verma v. Delhi Transport Corporation**¹, the relevant multiplier is “15” and it has to be taken into consideration, since appellant No.1 is aged 35 years. But the Tribunal has taken “14.81” basing on

¹ (2009) 6 Supreme Court Cases 121

the judgment of **Bhagwan Das. v. Mohd.Arif**². He also submits that no amount is granted towards pain and suffering, attendant charges and loss of amenities of life.

Heard learned Standing Counsel for the 2nd respondent, who submits that the Tribunal has considered the issue in proper perspective and granted adequate compensation by applying multiplier, though it is a case of injuries and though the disability was assessed at 85%, but the Tribunal has taken 100% and granted compensation and he submits that no interference is called for and no enhancement of compensation is warranted.

In this case it is to be seen that as per **Sarla Verma** for the age of 35 years, “15” multiplier has to be applied. As far as salary of appellant No.1 is concerned, he was drawing salary of Rs.4521/- as per Ex.A.17 rounded off to Rs.4520/- per month and after making deductions towards his personal expenditure, his contribution to the family was taken at Rs.3,000/-, which cannot be faulted and amount of Rs.68,562/- was granted towards medical expenses, transportation and other incidental charges basing on the bills produced by the petitioner. But no amount is granted towards pain and suffering, attendant

² 1987 ACJ 1052

charges, loss of amenities of life, though appellant No.1 underwent operation and he was hospitalized. Injuries are serious in nature and the Tribunal found that appellant No.1 also suffered paralytic affect after the accident. It is also found appellant No.1 requires attendant.

In view of above facts and circumstances of the case, the relevant multiplier “15” is to be taken and the same has to be applied to calculate the loss of earnings of appellant No.1, which comes to Rs.5,40,000/- (Rs.36,000/-x “15”). Towards loss of future prospects, pain and suffering, loss of amenities of life, attendant charges during which appellant No.1 lived, this Court is of the view that an amount of Rs.1,00,000/- in lumpsum is to be awarded in addition to medical expenses of Rs.68,562/- granted by the Tribunal.

Thus, the petitioners are entitled to a total sum of Rs.7,08,562/- (Rupees Seven Lakhs Eight Thousand Five Sixty two only) as against Rs.6,01,722/- granted by the Tribunal, towards compensation and the same is accordingly granted. Since the rate of interest awarded by the Tribunal at 7.5% per annum is in accordance with the rate of interest awarded by the Supreme Court in

Rajesh v. Rajbir³, the same rate of interest is awarded on enhanced amount from the date of claim petition till realisation.

Accordingly, the appeal is allowed to the extent indicated above by enhancing the compensation, as indicated above, and confirming the same in all other respects, including the rate of interest. There shall be no order as to costs. As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, stand disposed of.

As LR petition in MACMA.MP.No.1571 of 2015 is allowed, the same shall be carried out by Registry.

A.RAJASHEKER REDDY,J

03-01-2019

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³ 2013ACJ 1403=2013(4) ALT 35