

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.268 OF 2012

JUDGMENT:

This appeal is filed by the appellant-claimant aggrieved by the Order and Decree dated 22.06.2011 passed in O.P.No.1169 of 2009 by the Motor Vehicles Accidents Claims Tribunal-cum-II Additional Chief Judge, City Civil Courts, Hyderabad (for short, the Tribunal).

2. The brief facts of the case are that on 25.03.2009, while the appellant was proceeding on his motorcycle bearing No.AP23DB 1344 from Muddapuram Village towards Hyderabad, and when he reached outskirts of Gudur Village at about 7.00 A.M., the driver of DCM van bearing No.AP36W 5867, drove it in a rash and negligent manner and while attempting to overtake another vehicle, dashed the motorcycle, due to which, the appellant fell down and sustained fracture injury to his right leg, right hand, mandible injury and injury to the eyes and other multiple injuries all over the body. He filed aforesaid OP against respondents Nos.1 and 2, owner and insurer of DCM van, claiming compensation of Rs.7,00,000/- for the injuries sustained by him.

3. Before the Tribunal, respondent Nos.1 and 2 filed their separate counters 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 DCM van and awarded compensation of Rs.6,76,400/- 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 Kasireddy Jagathpal Reddy, learned counsel for the appellant, submitted that due to the amputation of right leg of the claimant, he cannot perform his duties of a driver in future and hence, his disability can be considered at 100%. In support of his contention, he relied on a decision of this Court in **Pamarthi Subba Rao V. H.Rama Rao**¹ and a decision of the Hon'ble Supreme Court in **Rajan V. Soly Sebastian**². He further submitted that as per the judgment of the Hon'ble Supreme Court in **Jagdish V. Mohan**³, the appellant is entitled to 40% increment towards future prospects. Basing on the said submissions, the learned counsel seeks to enhance the compensation amount.

6. Smt.A.Jayanthi, learned Standing Counsel for respondent No.2, submitted that the Tribunal passed a well reasoned order and sought to dismiss the appeal.

7. A perusal of the order of the Tribunal, it is clear that the Tribunal has granted Rs.50,000/- towards pain and suffering, Rs.10,000/- towards nervous shock, Rs.40,000/- towards medical

¹ 2009 ACJ 652

² 2015 Law Suit (SC) 783

³ (2018) 4 SCC 571

expenditure and Rs.50,000/- towards future medical needs, which are reasonable and need no interference.

8. Insofar as the disability is concerned, Ex.A9 disability certificate issued by the doctor (P.W.2) shows that the appellant suffered 60% disability due to amputation of his right leg, basing on which, the Tribunal fixed the disability at 60%. A Division Bench of this Court in **Pamarthi Subba Rao's** case (supra), held that *'if there is 100 per cent disability to do the work the workman was doing earlier, it has to be treated that workman has suffered 100 per cent disability'*. In **Rajan's** case (supra), the Hon'ble Supreme Court has confirmed 100% disability. In the present case, the claimant was working as driver with P.W.5 and his right leg was amputated due to the accident. Since amputation of the claimant's right leg would affect his normal functioning as a driver, I am inclined to fix the disability of the claimant at 100%, as per the ratio laid down in the above cases. In the facts and circumstances of the case, I am inclined to fix the income of the appellant at Rs.8,000/- per month. As rightly contended by the learned counsel for the appellant, the appellant is entitled to 40% future prospects as per **Jagdish's** case (supra). As the appellant was aged about 26 years at the time of accident, the appropriate multiplier is '17'. Hence, the compensation under the head 'permanent disability' comes to Rs.22,84,800/- {Rs.11,200/- (Rs.8,000/- + 40%) X 12 X 17}. The amount of Rs.8,000/- granted by the Tribunal towards Actual loss of income is enhanced to

Rs.16,000/-. Therefore, the total compensation comes to Rs.24,50,800/- (Rs.22,84,800/- + Rs.50,000/- + Rs.10,000/- + Rs.40,000/- + Rs.50,000/- + Rs.16,000/-).

9. In the result, the Motor Accident Civil Miscellaneous Appeal is allowed enhancing the compensation amount awarded by the Tribunal from Rs.6,76,400/- to Rs.24,34,800/-. The enhanced amount shall carry interest @ 7.5% per annum from the date of claim petition till realization. As the appellant claimed only Rs.7,00,000/-, he is directed to deposit deficit Court fee before the Tribunal. Miscellaneous petitions pending, if any, shall stand closed. No costs.

Date: 20.08.2019
TJMR

T.AMARNATH GOUD, J

