

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.2582 OF 2009

JUDGMENT:

This appeal is filed by the appellant-claimant aggrieved by the Order and Decree dated 18.07.2008 passed in O.P.No.2775 of 2005 by the II Additional Chief Judge, City Civil Court at Hyderabad (for short, the trial Court).

2. The brief facts of the case are that on 17.04.2005, while the appellant was traveling as a pillion rider on a motorcycle, near Yellamma Temple, one Tempo-trax vehicle bearing No.AP24V 3417, came in a rash and negligent manner at high speed and hit the motorcycle in the opposite direction. In the said accident, the appellant sustained grievous injuries. She filed aforesaid OP against respondents Nos.1 and 2, owner and insurer of Tempo, respectively, claiming compensation of Rs.2,00,000/- for the injuries sustained by her.

3. Before the trial Court, respondent No.1 remained *ex parte*. Respondent No.2 filed its counter denying the averments of the claim petition and contended that the accident occurred due to the negligence on the part of the driver of the motorcycle and that the amount claimed is excessive and prayed to dismiss the claim petition.

4. After considering the oral and documentary evidence on record, the trial Court opined that as the driver of the motorcycle

was not examined to prove that he had a valid driving licence, there is contributory negligence on the part of the appellant and fixed the liability of the insured vehicle i.e., respondent No.2 at 50%. Insofar as compensation is concerned, the trial Court granted total compensation of Rs.91,000/- i.e., Rs.60,000/- towards two fractures, Rs.10,000/- towards pain and suffering, Rs.10,000/- towards loss of amenities, Rs.6,000/- towards loss of income for three months and Rs.5,000/- towards nutritious food, transport and assistance and directed respondent No.2 to pay a sum of Rs.45,500/- (Rs.91,000/- X 50%) to the appellant. Dissatisfied with the quantum of compensation, the appellant filed the present appeal, seeking enhancement of the same.

5. Sri P.Rama Krishna Reddy, learned counsel for the appellant, submits that the trial Court committed a serious error in opining that the driver of the motorcycle was driving the vehicle negligently or the extent of his contributory negligence was 50%. He further submits that merely because the driver of the motorcycle was not possessing a driving licence, he cannot be held guilty of contributory negligence. He further submits that though there is evidence before the trial Court to prove the disability of the appellant at 45%, the trial Court did not take into consideration the same and seeks to enhance the compensation in that regard by taking the income of the appellant at Rs.4,500/- per month. He relied on the decisions of the Hon'ble Supreme Court in **Sudhir**

Kumar Rana Vs. Surinder Singh¹ and Sanjay Kumar Vs. Ashok Kumar².

6. Smt.P.Satya Manjula, learned Standing Counsel for respondent No.2, submits that in case of head-on-collision, the natural presumption is that both the drivers are guilty of negligent driving in equal ratio. To rebut that presumption, both the parties have to examine their respective drivers. In the present case, as the appellant failed to examine the driver of the motorcycle, the trial Court had drawn an adverse inference that the driver of the motorcycle was not possessing a driving license and accordingly, fixed the contributory negligence on the part of the appellant at 50%. Therefore, there are no grounds to interfere with the order of the trial Court. To buttress her argument, she relied on a judgment of the Hon'ble Supreme Court in **Raj Rani Vs. Oriental Insurance Co. Ltd.**³

7. In the similar circumstances, in **Sudhir Kumar Rana's** case (supra), the Supreme Court held that the scooterist cannot be held guilty of contributory negligence merely because he was not possessing a driving licence. Therefore, the finding of the trial Court in fixing the contributory negligence on the part of the appellant is set aside. Coming to the aspect of disability, though the appellant filed Ex.A.8, which was issued by a doctor in the Gandhi Hospital, to show that she suffered disability at 45%, the

¹ 2008 ACJ 1834

² 2014 ACJ 653

³ 2009 ACJ 2003

trial Court wrongly did not take into consideration. Hence, I am inclined to take the disability of the appellant at 45%. Insofar as fixing the income of the deceased is concerned, in **Sanjay Kumar's** case (supra), the Hon'ble Supreme Court fixed the income of the injured therein, who is an embroiderer, at Rs.4,500/- per month. In the present case, the appellant is said to be the tailor, and hence, I am inclined to take her income at Rs.4,500/- per month. As the appellant was aged about 20 years at the time of accident, the appropriate multiplier is '18'. Therefore, the compensation under the head 'permanent disability' comes to Rs.4,37,400/- (Rs.4,500/- X 12 X 18 X 45%). The total compensation is as under:

Sl.No.	Name of Head	Awarded by trial Court	Awarded by this Court
01.	Fractures	Rs.60,000/-	Rs.60,000/-
02.	Pain and suffering	Rs.10,000/-	Rs.10,000/-
03.	Loss of amenities	Rs.10,000/-	Rs.10,000/-
04.	Loss of income for three months	Rs.6,000/-	Rs.13,500/-
05.	Nutritious food, transport assistance and	Rs.5,000/-	Rs.5,000/-
06.	Permanent disability	---	Rs.4,37,400/-
TOTAL		Rs.45,500/- (Rs.91,000/- X 50%)	Rs.5,19,200/-

8. In the result, the Motor Accident Civil Miscellaneous Appeal is allowed, enhancing the compensation amount awarded by the trial Court from Rs.45,500/- to Rs.5,19,200. The enhanced amount shall carry interest @ 7.5% per annum from the date of claim petition till realization. As the claimant claimed only Rs.2,00,000/-, she is directed to deposit deficit Court fee before the

trial Court. Miscellaneous petitions pending, if any, shall stand closed. No costs.

T.AMARNATH GOUD, J

Date: 10.07.2019
TJMR

