

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.2122 OF 2006

JUDGMENT:

This appeal is filed by the appellant-claimant aggrieved by the Order and Decree dated 13.07.2006 passed in M.V.O.P.No.1759 of 2003 by the Motor Vehicle Accident Claims Tribunal-cum-XXI Additional Chief Judge-cum-Additional Metropolitan Sessions Judge for the Trial of Communal Offence Cases-cum-VII Additional Metropolitan Sessions Judge, Red Hills, Nampally, Hyderabad (for short, the Tribunal).

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

3. The brief facts of the case are that on 16.01.2003, the petitioner, who is a practicing advocate, left Kamareddy for attending District Court at Nizamabad by his car bearing No.AP-10M-9651 and at about 1.30 p.m., when he reached near Chandrayanpally Village outskirts, one lorry bearing No.AP-1T-1718 belonging to the 1st respondent, insured with the 2nd respondent, came in a rash and negligent manner in the opposite direction and colluded with the car, as a result of which, the petitioner and other inmates of the car sustained grievous injuries. Immediately after the accident, they were shifted to Government Hospital, Nizamabad, and on the same night, he was shifted to Amurtha Lakshmi Hospital, Nizamabad. As the condition of the petitioner was critical, he was again

shifted to NIMS Hospital, Panjagutta, Hyderabad, on 17.01.2003. As both of his lungs were damaged, he was kept on ventilator for about three weeks and he underwent surgery for both legs for the fractures and he was treated at NIMS upto 06.03.2003, even after discharge from the Hospital, he is undergoing treatment. As one of his legs was infected, once again he was admitted into NIMS on 29.03.2003 and was discharged on 28.04.2003. The petitioner was aged about 42 years earning not less than Rs.15,000/- per month by the date of the accident. Due to the injuries, he is now confined to bed and due to the fracture of legs, he sustained permanent disability. Hence, the petitioner claimed a compensation of Rs.20,00,000/- for the injuries sustained by him in the above said accident.

4. Before the Tribunal, the second respondent filed its written statement denying the averments of the claim petition and contended that the amount claimed is excessive and prayed to dismiss the claim petition.

5. 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 offending lorry and awarded total compensation of Rs.1,44,500/- with interest @ 7.5% per annum from the date of petition till the date of realization i.e., Rs.75,000/- towards fracture injuries & other injuries, Rs.15,000/- towards pain & suffering, Rs.4,500/- towards loss of earnings for a period of 2 ½

months, Rs.25,000/- towards undergoing operation twice and Rs.25,000/- towards medical expenses and other incidental charges. Dissatisfied with the quantum of compensation, the appellant filed the present appeal, seeking enhancement of the same.

6. Heard Sri K.Raghuveer Reddy, learned counsel appearing for the appellant/claimant and Sri G.Vishweshwar Reddy, learned standing counsel appearing for the 2nd respondent/insurance company. Perused the material available on record.

7. Sri K.Raghuveer Reddy, learned counsel appearing for the appellant/claimant, basing on the evidence of P.Ws.3 & 4 and on Exs.A-3 to A-25-Medical record, submits the claimant was hospitalized under several occasions and has taken treatment in NIMS Hospital and also in Udai Clinic Orthopaedic Centre. In support of the same, he examined P.W.3-Dr.Ved Prakash and P.W.4-Dr.Chandrasekhar. Learned counsel further submitted that it is evident from the medical bills obtained from the hospitals that the claimant incurred an amount of Rs.2,31,763/- from NIMS and Rs.42,373/- from Udai Clinic Orthopaedic Centre towards purchase of medicines during the period of treatment, but the trial Court awarded a meager amount of Rs.25,000/- only under the head of medical expenses and other incidental charges. Learned counsel further submitted that during the period of six months, the claimant could not attend the office and the Court work, being advocate,

and prayed to award Rs.10,000/- per month, which comes to Rs.60,000/- towards loss of income and as per Ex.A-28-copy of Income Tax Returns for the year 2002-03 & Ex.A-29-Income Tax Statement for the year 2001-02, the income of the claimant was Rs.1,30,950/- with taxable income of Rs.63,660/- and therefore, an amount of Rs.10,000/- towards monthly income of the claimant has to be considered, but the Tribunal has awarded a meager amount of Rs.4,500/- only on the ground that the claimant was in the hospital for a period of two and a half months. Learned counsel further submitted that under the head of pain and suffering, the Tribunal has awarded only an amount of Rs.15,000/-, which needs to be enhanced. Learned counsel, with regard to the disability of the claimant is concerned, has submitted that P.W.4-Dr.P.Chandra Sekhar, who treated the claimant, has assessed the disability at 15% to 20% basing on the six fracture injuries which are serious in nature, i.e., (i) head injury; (ii) bilateral chest injuries; (iii) posterior dislocation of left hip; (iv) grade-I compound fracture right thigh bone (v) bi-malleolar fracture right tibia (ankle); & (vi) inter condylar fracture right tibia (leg bone). Learned counsel further submitted that since the claimant was aged about 44 years at the time of the accident as per the evidence of P.W.1, the relevant multiplier applicable is '14' as per the decision of the Apex Court reported in **Sarla Verma and others v. Delhi Transport Corporation and Another**¹ and prays to enhance the compensation awarded by the Tribunal.

¹ (2009) 6 SCC 121

8. On the other hand, Sri G.Vishweshwar Reddy, learned standing counsel appearing for the 2nd respondent/insurance company, vehemently contended that the appeal filed by the claimant seeking enhancement of the award passed by the Tribunal needs to be dismissed, as the award passed by the Tribunal itself is excessive and the same needs no consideration since the claimant has not filed any proof of income. He further contended that there are two different opinions given by P.W.3-Dr.Ved Prakash & P.W.4-Dr.P.Chandra Sekhar with regard to the assessment of the disability sustained by the claimant and in view of the discrepancy, the same cannot be considered. He further submits that with regard to the medical bills, the claimant has not substantiated any evidence in support of his claim and the amount of Rs.25,000/- awarded by the Tribunal towards medical expenses and other incidental charges is just and proper and prays that in view of the above, the appeal needs to be dismissed by confirming the order passed by the Tribunal.

9. In reply, Sri K.Raghuveer Reddy, learned counsel appearing for the appellant/claimant, contended that with regard to the medical expenses incurred by the claimant, number of medical bills have been filed by the claimant and the same are marked as Exs.A-21 to A-25; that P.W.3-Dr.Ved Prakash & P.W.4-Dr.P.Chandra Sekhar, who are Orthopedic Surgeons, who treated the claimant, have deposed that the claimant suffered disability @ 15% to 20%; that with regard to income of the claimant, since the claimant being a professional

and practicing as an advocate, his income increases year-by-year along with his experience and more over, the Apex Court, in a decision reported in **Sandeep Khanuja v. Atul Dande & Another²**, has taken the notional income @ Rs.10,000/- per month; and prayed to allow the appeal by enhancing the compensation awarded by the Tribunal.

10. At the time of accident, as per the evidence of P.W.1, he was aged about 44 years and as a practicing advocate, he was traveling from Kamareddy to Nizamabad District as and when he had cases and on the fateful day, he was also travelling and during the transit, the accident has taken place. In support of his income, the claimant has filed Exs.A-28 to A-31, which indicate that he is an income tax assessee and he is having reasonably good income and he is maintaining a family and also maintaining a car and thus, basing on the evidence placed on record and in view of the decision reported in **Sandeep Khanuja's case** (supra), this Court feels that fixing of income of the claimant Rs.10,000/- per month would be just and proper.

11. With regard to the issue of disability is concerned, as per the evidence of P.W.4-Dr.P.Chandra Sekhar, who has treated the claimant in NIMS Hospital on two spells for quite a long period, he has categorically stated that the claimant suffered 15% to 20% disability and as per the evidence of P.W.3-Dr.Ved Prakash, who further treated the claimant in his hospital, has also stated that the claimant suffered 50% to 55% disability.

² 2017 SCC OnLine SC 88

12. In the light of the above evidence adduced by P.Ws.3 & 4 and also Ex.A-16, this Court feels that considering 15% disability for the grievous six fracture injuries suffered by the claimant would be just and proper. Since the claimant is aged about 44 years and self-employed, he is entitled to addition of 25% towards future prospects as per the decision of the Hon'ble Supreme Court in **National Insurance Co. Ltd. Vs. Pranay Sethi**³. Therefore, the monthly income of the claimant comes to Rs.12,500/- (Rs.10,000/- + Rs.2,500/-). Therefore, the annual income of the claimant comes to Rs.1,50,000/- (Rs.12,500/- x 12 months). The multiplier for the age of the deceased is '14' as per the decision reported in **Sarla Verma and others v. Delhi Transport Corporation and Another**⁴. Hence, the compensation under the head 'loss of disability' comes to Rs.3,15,000/- (Rs.1,50,000/- X 14 X 15%). Admittedly, as per the Medical Bills issued by NIMS Hospital & Udai Clinic Orthopaedic Centre, which are placed on record, the claimant has incurred an amount of Rs.42,373/- towards purchase of medicines in Udai Clinic Orthopaedic Centre and Rs.2,31,763/- towards purchase of medicines in NIMS Hospital (total Rs.2,74,136/-) and the same cannot be doubted. Under the head of pain and suffering, the Tribunal has awarded only Rs.15,000/- and this Court feels that awarding an amount of Rs.25,000/- would be just and reasonable and the same is

³ 2017(6) ALD 170 (SC)

⁴ (2009) 6 SCC 121

accordingly considered. The Tribunal has not awarded any amount towards extra nourishment and attendant charges. Therefore, this Court feels that it would be just and appropriate to grant an amount of Rs.10,000/- towards extra nourishment and an amount of Rs.9,000/- towards Attendant charges for three months @ Rs.100/- per day. Since the Tribunal has not awarded any amount towards Transportation, this Court feels that it would be just and proper to award an amount of Rs.5,000/- under the head of Transportation. Since the Tribunal has not awarded any amount towards loss of amenities, this Court feels that it would be just and proper to award an amount of Rs.50,000/- towards loss of amenities. Except the said enhancement, rest of the award remains un-changed.

13. Hence, the compensation under various heads is as follows:

Sl.No.	Name of Head	Awarded by Tribunal	Awarded by this Court
01.	Fracture injuries & other injuries	Rs.75,000/-	Rs.75,000/-
02.	Pain & Suffering	Rs.15,000/-	Rs.25,000/-
03.	Loss of earnings	Rs.4,500/-	Rs.4,500/-
04.	Operations (twice)	Rs.25,000/-	Rs.25,000/-
05.	Medical expenses & other incidental charges	Rs.25,000/-	Rs.2,74,136/-
06.	Loss of disability	-	Rs.3,15,000/-
07.	Extra Nourishment	-	Rs.10,000/-
08.	Attendant charges	-	Rs.9,000/-
09.	Transportation	-	Rs.5,000/-
10.	Loss of amenities	-	Rs.50,000/-
TOTAL		Rs.1,44,500/-	Rs.7,92,636/-

14. In the result, the Motor Accident Civil Miscellaneous Appeal is partly allowed by enhancing the compensation amount awarded by the Tribunal from Rs.1,44,500/- to Rs.7,92,636/- payable by both the respondents jointly and severally. The enhanced amount shall carry interest @ 7.5% per annum from the date of petition till realization. The respondents are directed to deposit the enhanced amount along with proportionate costs and interest within two (02) months from the date of receipt of a copy of this order. On such deposit, the appellant is permitted to withdraw the entire amount. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 24th September, 2019

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