

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA.No.2178 OF 2005

JUDGMENT:

Having dissatisfied with the amount of Rs.85,500/- granted as compensation by the award and decree dated 02-12-2002 passed in O.P. No.1616 of 2000 on the file of the Chief Judge, City Civil Court, Hyderabad (for short, 'the Tribunal'), as against the claim of Rs.4,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), the petitioner-claimant preferred the instant appeal under Section 173 of the Act, seeking enhancement of compensation.

02. During the pendency of appeal, the appellant-claimant filed I.A.No.1 of 2019 permitting him to enhance the claim from Rs.4,00,000/- to Rs.10,00,000/- on the ground that the appellant has been suffering from total disability which resulted in total loss of earning capacity and further he has to live alone as he is unfit for marital life. It is also pleaded in the affidavit that the appellant has been under continuous treatment since the date of accident and his life is spoiled. By taking into consideration of said facts, the said I.A. was allowed.

03. The appellant herein is the petitioner-claimant, while the respondent Nos.1 and 2, who are the owner and the insurer of the van bearing registration No.AP 12 T 7958, were respondent Nos.1 and 2, respectively, in the original petition.

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

05. The facts, in brief, are that the petitioner is aged about 20 years and he was working in a hotel and earning Rs.2,000/- per month. On 14-03-2000 at about 12 noon the petitioner was proceeding on foot from Nagarjunasagar ring road to Sunder Dharma Kanta and when he reached near Sunder Dharma Kanta, one Van bearing No.AP 12T 7958 which was coming from L.B.Nagar ring road towards Gayathrinagar, the driver of the Van drove the same in a rash and negligent manner and hit the petitioner due to which he sustained grievous injuries and immediately he was shifted to Osmania General Hospital for treatment. L.B.Nagar police registered a case in Cr.No.147 of 2000 under Section 337 IPC against the driver of the said Van. The petitioner is

claiming compensation of Rs.1,50,000/- on the ground that he sustained injuries in a motor vehicle accident.

06. The first respondent remained exparte and second respondent, insurer contested the case and filed counter in the Tribunal and denied the allegations.

07. The following issues were framed before the Tribunal:

1. Whether the petitioner sustained injuries due to rash and negligent driving of first respondent's Van by its driver?
2. Whether the petitioner is entitled for compensation, if so to what amount and from whom?
3. To what relief?

08. To prove his case, the petitioner examined two witnesses and marked Exs.A1 to A-12 documents. On behalf of respondents, Ex.B.1 the copy of policy is marked.

09. After considering the evidence on record, the Tribunal has held that the accident occurred due to rash and negligent driving of the driver of the van bearing No.AP 12T 7958 and granted Rs.9,000/- towards loss of earnings. Rs.1500/- towards transport charges, Rs.10,000/- towards medical expenses, Rs.15,000/- towards pain and suffering and Rs.50,000/- under the head of disability. Thus in all, the Tribunal granted an

amount of Rs.85,500/-. Against the same, the present appeal is preferred.

10. learned counsel for the appellant submits that though the appellant suffered fracture of backbone L1 wedge compression and two more fractures and head injury and also suffering with Paraplegia and he is not having control over both lower limbs and though Doctor issued disability certificate, which is marked as Ex.A.7 and declared 75% disabled, only Rs.50,000/- was granted by the Tribunal under head of disability and Rs.9,000/- towards loss of earnings. Learned counsel for the appellant relied on the judgment of **Nagappa v. Gurudayal Singh**¹, wherein in para Nos 9 and 10, the Supreme Court held as under:

“ It appears that due importance is not given to sub-section (4) of [Section 166](#) which provides that the Tribunal shall treat any report of the accidents forwarded to it under sub-section (6) of [Section 158](#), as an application for compensation under this Act.

Thereafter, [Section 168](#) empowers the Claims Tribunal to "make an award determining the amount of compensation which appears to it to be just". Therefore, only requirement for determining the compensation is that it must be 'just'. There is no other limitation or restriction on its power for awarding just compensation.”

11. On the other hand, learned Standing Counsel for respondent-Insurance company submits that since

¹ (2003)2 Supreme Court Cases 274

appellant himself claimed his income as Rs.2,000/-, the Tribunal has rightly taken Rs.1500/- per month and granted compensation of Rs.9,000/- towards loss of earnings by concluding that he must have been on bed rest for a period of six months and no interference is called for.

12. In this case it is to be seen that since it is a claimant's appeal, the only issue that is required to be considered is whether the quantum of compensation is required to be enhanced or not, since other issues are held in favour of the appellant.

13. Admittedly, the Doctor was examined as PW.2 and Ex.A.7 disability certificate was marked, which shows that the petitioner suffered disability and as per disability certificate the petitioner is having 75% of disability and bladder control is not present and he has become an impotent because of the injury. It is also stated that the patient is suffering with dramatic paraplegia. But the Tribunal has granted Rs.50,000/- under the head of disability only on the ground that PW.2 has not treated the petitioner. But his evidence goes to show that petitioner took treatment before him after the accident and his evidence also goes to show that certificate was

issued after perusing old medical records of his hospital and Uday Hospital, where petitioner took treatment. The Tribunal also observed that the petitioner is not able to walk and is walking with sticks and legs are uneven and unable to stand. The petitioner will not be normal person inspite of best treatment in future. PW.2 also stated that the petitioner is having permanent disability of his two lower legs and he is unfit for matrimonial life. In view of the evidence of PW.2 coupled with Ex.A.7, it is evident that the petitioner sustained grievous injuries. But the Tribunal erroneously held that Ex.A.7 cannot be believed and while calculating the loss of future earnings without following multiplier, it has granted Rs.50,000/- only in lumpsum under the head of disability, which is erroneous. The petitioner was aged 20 years and as per Ex.A.7 disability certificate and observation of the Tribunal goes to show that he is unable to walk, this Court is of the opinion petitioner is having permanent disability of his two lower legs and there are bleak chances of becoming normal and it is just and necessary to take the disability of petitioner at 100%. As per law laid down by the Supreme Court in **Sarla Verma v. Delhi Transport Corporation** ², the multiplier '18' has to

² (2009) 6 SCC 121

be taken. When the said multiplier factor '18' is applied, the loss of future earnings on account of permanent disability works out to Rs.4,32,000/- (24,000 x '18').

14. The petitioner also claimed Rs.26,000/- towards medical expenses. In support of his claim, he produced medical bills, X-rays, M.R.I. reports. In spite of the same, the Tribunal without any basis reduced the amount claimed by the petitioner and granted Rs.10,000/-. Hence it is just and necessary to enhance the same and the same is enhanced to Rs.26,000/-.

15. The petitioner also claimed an amount of Rs.25,000/- towards pain and suffering. Though the petitioner suffered grievous injury and fracture of L1 wedge compression and fracture of right clavicle, the Tribunal has granted only Rs.15,000/-, which is on lower side and the same is liable to be enhanced. In view of the same, the petitioner is entitled for Rs.25,000/- towards pain and suffering.

16. Further no amount is granted by the Tribunal towards loss of amenities of life and marriage prospects. As the Doctor under Ex.A.7 certified that the petitioner became impotent and unfit for marital life, he is entitled for Rs.1,00,000/- in lumpsum towards loss of amenities

of life and extra-nourishment and attendant charges. Since this Court has come to conclusion that the petitioner suffered 100% disability, he is also entitled for future prospects at 50%. It is the case of the petitioner that he was working in a hotel and earning Rs.2,000/- per month. Due to permanent disability, the petitioner lost his income. As such, he is entitled for future prospects at 50%, which works out to Rs.2,16,000/-and the same is also granted to the petitioner.

17. Accordingly, the appellant/petitioner is entitled for the amounts under various heads as follows:

Loss of future earnings on account of disability.	Rs.4,32,000/-
Medical expenses	Rs.26,000/-
Pain and suffering	Rs.25,000/-
Loss of amenities of life, extra-nourishment and attendant charges	Rs.1,00,000/-
Loss of earnings	Rs.9,000/-
Transportation charges	Rs.1500/-.
Future prospects	Rs.2,16,000/-
Total	Rs.8,09,500/-

18. Accordingly, the appeal is allowed granting compensation of Rs.8,09,500/- as against the compensation of Rs.85,500/- granted by the Tribunal payable by the respondents jointly and severally. Enhanced amount carries interest @ 7.5% per annum from the date of petition till realisation.

19. The Tribunal shall deduct the difference of Court fee from out of enhanced compensation deposited.

As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, stand disposed of.

A.RAJASHEKER REDDY, J

01-04-2019
Nvl



