

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA No.3644 of 2005

JUDGMENT::

The claimant has preferred this appeal against the judgment and award passed by IV Addl. District Judge, (FTC), Nizamabad, (Motor Accident Claims Tribunal), (hereinafter referred to as "Tribunal") in Original Petition (OP) No.922 of 2001, seeking for enhancement of compensation awarded by the Tribunal at Rs.20,000/- as against the claim of Rs.1,50,000/-. The parties hereinafter will be referred to as they were arrayed before the Tribunal for convenience sake.

02. Respondent No.1 is the owner of the jeep bearing registration No.AP 25T 8651. Respondent No.2 is the insurer of the jeep.

03. Since no cross objections or cross appeal is preferred by the respondents against the judgment or findings recorded by the Tribunal as to rash and negligent driving of the jeep by its driver, this appeal for enhancement of compensation by the claimant, the

discussion will be restricted only as to the adequacy or otherwise of the quantum of compensation granted by the Tribunal.

04. The facts stated, in brief, leading to institution of this appeal are that, on the fateful day i.e. 11-04-2001, the claimant along with others was travelling in the jeep bearing registration No.AP 25T 8651 from Bodhan towards Saloors camp side and at about 5-00 pm when they reached near Pochammagudi outskirts of Bodhan, the driver of the jeep in question drove the jeep in a rash and negligent manner and could not control the vehicle, due to which the jeep turned turtle and due to the impact of the same, the claimant sustained skull fracture, fracture to her left jaw, left eye injured due to which her vision affected and also sustained injuries to her face and to legs. That the claimant was initially shifted to Government hospital at Bodhan, where she was given first-aid and thereafter shifted to Government hospital at Nizamabad. A case in Cr.No.84 of 2001 was also registered against the driver of the jeep by the Police Bodhan. The claimant incurred huge amounts for her treatment and she is still taking treatment in private hospitals and

already incurred an expenditure of Rs.60,000/-. That prior to the date of the accident, the claimant used to attend agricultural work and she was a vegetable vendor and by doing so, she used to earn a sum of Rs.8,000/- per month. That due to the accident, she is unable to move from the bed, cannot walk freely and her future earnings and amenities are affected and she has to depend on others for her day-to-day necessities. That as on the date of the accident she was aged 20 years. That the accident occurred due to the rash and negligent driving of the driver of the jeep in question and hence both the respondents are liable to pay the compensation jointly and severally.

05. The Tribunal after considering the evidence placed on record by the parties, awarded compensation of Rs.20,000/-. Hence this appeal by the claimant.

06. Heard the learned counsel for the claimant-appellant and the learned counsel for respondent-insurance company.

07. Learned counsel for the appellant submits that though the claimant suffered multiple injuries *i.e.* one grievous injury and two simple injuries, the Tribunal granted meagre amount of Rs.7,000/- for injuries, both grievous and simple and Rs.10,000/- for pain and suffering and medical expenses, though the claimant in her examination as PW-1 deposed that she incurred an amount of Rs.60,000/- towards medical expenses. Learned counsel submitted that no compensation was awarded under the heads extra nourishment, loss of earnings during the period of treatment, attendant and transportation charges.

08. Learned counsel for respondent-insurance company, on the other hand, submits that PW-2 Doctor who was in the habit of issuing disability certificates without any scientific analysis, the disability assessed at 35% by him was rightly disbelieved and the compensation awarded by the Tribunal in the facts and circumstances of the case is just and reasonable and does not warrants any interference.

09. It is to be seen that to prove the injuries, the Doctor who has treated the claimant has been examined as PW-2 on Commission.

PW-2 in his evidence stated that he examined PW-1 and noted the following injuries:-

i) fracture of jaw mandible

*ii) blunt injury to scalp front oparietal area 10 x 5 x 5
on haumtoma*

iii) Abrasion over the upper lip about 2 x 2 cms.

10. Though PW-2 has issued disability certificate assessing the disability at 35%, to the suggestion put during the course of his examination stated that the claimant can attend to all her works normally and her working capacity is not at all affected due to the injuries sustained by her. Hence, the disability certificate assessing the disability at 35% is contrary to his own evidence and the Tribunal rightly eschewed it from consideration. But, it is to be seen that admittedly the claimant sustained one grievous injury and two simple injuries even as per the contents of FIR and charge

sheet filed by the Police in the case marked as Ex.B-2 besides the evidence of PW-1 (victim) and PW-2 doctor who treated her.

11. The claimant has pleaded and deposed as PW-1 that prior to the date of the accident, she was earning Rs.8,000/- per month.

The accident occurred in the year 2001 and as on the date of the accident the claimant was aged 20 years. There is no other

evidence brought on record to suggest that she was earning a sum of Rs.8,000/- per month, except her self serving statement.

However, in view of the ruling of the Supreme Court in

RAMACHANDRAPPA vs. THE MANAGER, ROYAL SUNDARAM ALLIANCE INSURANCE COMPANY LIMITED¹

the monthly income of the claimant can be safely taken at

Rs.4,500/- per month. There is no disability sustained by the

claimant in this case. However, the Tribunal did not award any

amounts towards transportation charges, attendant charges, extra

nourishment and loss of earning for the period during which she

underwent treatment. Though the medical bills under Exs.A-4 & 5,

¹ (2011) 13 SCC236)

the amount mentioned therein is very meagre, but the claimant in her evidence stated that she had to incur an amount of Rs.60,000/-.

In the absence of any medical bills issued either by the hospital or the medical pharmacy shop, considering the nature of injuries sustained, an amount of Rs.20,000/- can be awarded towards medical expenses.

12. It is settled proposition of law that rule of compliance of provisions of the Evidence Act is not strictly applicable in motor accident claim petitions filed under Section 166 of the Motor Vehicles Act, as it is only a summary enquiry. When once the claimant pleaded and proved by way of adducing documentary evidence, in the absence of the same being denied or disproved by adducing contra evidence muchless putting a suggestion that they are false bills, by way of cross examination, eschewing the same from consideration is nothing short of non-appreciation of evidence on record which is otherwise admissible.

13. The Supreme Court in the case of **ARVIND KUMAR MISHRA vs. NEW INDIA ASSURANCE COMPANY LIMITED**², observed that the basis of assessment of all damages for personal injury is compensation. The whole idea is to put the claimant in the same position as he was in so far as money can and one has to keep in mind that the victim has done no wrong; he has suffered at the hands of the wrongdoer and the Court must take care to give him full and fair compensation for that he had suffered. Each case has to be considered in the light of its own facts and at the end, one must ask whether the sum awarded is a fair and reasonable sum.

14. In **RAJ KUMAR vs. AJAY KUMAR**³, the Supreme Court has clarified the legal position, as to the manner in which the compensation can be awarded in injury claim under the Motor Vehicles Act, 1988, as well as the manner in which loss of earning capacity of the claimant has to be assessed. About different heads

² (2010) 10 SCC 254

³ (2011) 1 SCC 343

under which compensation is to be awarded the Supreme Court specified following heads:-

Pecuniary damages (Special Damages):-

- (i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.*
- (ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:*
 - (a) Loss of earning during the period of treatment;*
 - (b) Loss of future earnings on account of permanent disability.*
- (iii) Future medical expenses.*

Non-pecuniary damages (General Damages):-

- (iv) Damages for pain, suffering and trauma as a consequence of the injuries.*
- (v) Loss of amenities (and/or loss of prospects of marriage).*
- (vi) Loss of expectation of life (shortening of normal longevity).*

15. The Supreme Court also observed that in routine personal injury cases, compensation will be awarded only under heads (i), (ii) (a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii) (b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life. Assessment of pecuniary damages under item

(i) and under item (ii) (a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses item (iii) depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages items (iv), (v) and (vi) involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant.

The Supreme Court summarized the principles as under:-

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).

(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.

16. In **JAGDISH vs. MOHAN**⁴, three Judge bench of the Supreme Court directed that the principles laid down in **Arvind Kumar Mishra's** case (2 supra) and **Raj Kumar's** case (3 supra) must be followed by the Tribunals and High Courts in determining the quantum of compensation payable to the victims of the accident who are disabled either permanently or temporarily. In this case, the claimant sustained one grievous injury and two simple injuries which are discernable by oral and documentary evidence.

17. In the circumstances, the claimant is entitled to following compensation under different heads:-

Grievous injury (one)	:-	Rs. 15,000/-
Simple injuries (two)	:-	Rs. 20,000/-
Medical expenses	:-	Rs. 20,000/-
Pain and suffering	:-	Rs. 20,000/-
Loss of earnings	:-	Rs. 10,000/-
Transportation charges	:-	Rs. 5,000/-
Attendant charges	:-	Rs. 5,000/-
Extra nourishment	:-	Rs. 5,000/-

Total:-	:-	Rs. 1,00,000/-
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(Rupees One Lac only)

⁴ AIR 2018 SC 1347

18. The claimant is also entitled to interest @ Rs.7.5 % per annum on above-mentioned compensation amount from the date of filing of claim petition till realization of entire compensation amount.

19. In the result, the appeal is allowed and the impugned award passed by the Tribunal is modified and the compensation is enhanced to Rs.1,00,000/- with interest @ 7.5 % per annum. Time to deposit the amounts is three months, minus the amounts if any already deposited. Miscellaneous petitions, if any pending shall stand closed. No order as to costs.

A.RAJASHEKER REDDY, J

Dated: 02-04-2019
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