

HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.1172 OF 2012

JUDGMENT:

Aggrieved by the order and decree, dated 04.08.2010, passed by the learned XXII Additional Chief Judge - cum - Motor Accident Claims Tribunal, City Civil Court, Hyderabad (for short 'Tribunal') in O.P. No.2664 of 2008, the appellant preferred the present appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'Act').

2. The Tribunal by the aforesaid order granted a sum of Rs.1,20,000/- with interest at 7% per annum thereon as compensation as against the claim laid by the appellant herein under Section 166 of the Act for Rs.5,00,000/- for the injuries received in a road accident.

3. The appellant herein is the petitioner in O.P. No.2664 of 2008, while respondent Nos.1 and 2, who are owner and insurer of Motorcycle (Honda Shine) bearing registration No.AP 11CG T/R 3792, respectively, are arrayed as such.

4. For the sake of convenience, the parties herein are referred to as they were arrayed before the Tribunal.

5. Brief facts which led to filing the claim petition are; on 29.10.2008 when the petitioner was proceeding on his motorcycle from Taramathipet towards Anajipur at about 6.00 p.m., another motorcycle (Honda Shine) bearing registration No.AP 11CG T/R 3792 driven by its rider in a rash and

negligent manner came in opposite direction and hit the petitioner's vehicle, due to which, he sustained grievous injuries; that the petitioner was initially shifted to Srinivasa Hospital, Hayathnagar and from there he was taken to Osmania General Hospital; that Hayathnagar Police Station registered a case against the rider of the Motorcycle; that the petitioner was earning a sum of Rs.3,000/- per month by doing labour work; that due to the aforesaid accident, he incurred huge expenditure and lost earnings for a considerable period and, therefore, requested the Tribunal to grant the aforesaid amount as compensation against respondent Nos.1 and 2, who are owner and insurer of the opposite vehicle.

6. Respondent No.1, owner of accident vehicle, remained *ex parte* before the Tribunal.

7. Respondent No.2 - Insurer of the vehicle filed counter denying the manner in which the accident had occurred and the income of the petitioner etc. and finally requested to dismiss the claim with costs.

8. The Tribunal framed three issues for trial. During inquiry PWs.1 and 2 were examined and got marked Exs.A-1 to 5 on behalf of the petitioner. Whereas, no oral evidence was let in, but got marked Ex.B-1, copy of insurance policy on behalf of respondent No.2.

9. After hearing both sides and analyzing the evidence on record, the Tribunal gave a finding on issue No.1 to the effect that the accident had

occurred due to rash and negligent driving on the part of the rider of the opposite vehicle; and on issue No.2, on appraisal of medical evidence awarded a sum of Rs.1,20,000/- as compensation with interest at 7% per annum thereon from the date of petition till the date of deposit.

10. Dissatisfied with the quantum of amount awarded by the Tribunal, the petitioner preferred the present appeal contending the Tribunal has not properly considered the nature of injuries sustained by him that are grievous and the medical evidence while awarding the compensation and also the loss of earnings and other heads.

11. Heard Sri B. Venkat Reddy, learned counsel for the petitioner - appellant and Sri Ravi Shankar Jandhyala, learned Standing Counsel for respondent No.2 - Insurer.

12. It is contended by the learned counsel for the petitioner that what was awarded by the Tribunal is very low and the Tribunal ought to have awarded more compensation keeping in view the evidence let in by the petitioner both oral and documentary and also the monthly earnings of the petitioner and, therefore, requested to award the compensation as claimed by the petitioner as the same is just and reasonable.

13. Whereas, the learned Standing Counsel for respondent No.2 - Insurer would submit that there is no infirmity in the order passed by the Tribunal as the Tribunal has gone through the entire evidence on record and

that the Tribunal has dealt with each and every head and arrived at the sums to which the petitioner was entitled, as such, requested to dismiss the appeal.

14. Perused the material, both oral and documentary, on record. There is no dispute regarding cause of accident and, therefore, needs no discussion on issue No.1.

15. The only dispute to be resolved in this appeal is whether the Tribunal has granted the just and reasonable compensation to which the petitioner is entitled. The petitioner claimed a sum Rs.5,00,000/- towards compensation under various heads. As against the said amount, the Tribunal granted a sum of Rs.1,20,000/- viz., Rs.5,000/- towards shock, pain and suffering and also loss of amenities of life; Rs.20,000/- towards injury; Rs.90,000/- towards 40% disability; and Rs.5,000/- towards medical and incidental expenses. While awarding 40% disability, the Tribunal has taken the annual income of the petitioner at Rs.15,000/-. Whereas it is the case of the petitioner that he was earning a sum of Rs.3,000/- per month by doing labour work. It is a well-settled principle enunciated by the Hon'ble Apex Court that in the cases where income proof is absent, a sum of Rs.3,000/- per month is to be taken notionally. In view of the same, this Court has no hesitation to consider the income of the petitioner at Rs.3,000/- per month or Rs.36,000/- per annum.

16. Insofar as multiplier is concerned, the Tribunal has applied '15' in accordance with Second schedule appended to Section 163-A of the Act for

computation of permanent disability, but the same is incorrect in view of the law laid down by the Apex Court in **Sarla Verma v. Delhi Transport Corporation**¹. The age of the petitioner, as per the claim petition, is 45 and relevant multiplier for the age group of 41-45 is '14' as per the said aforesaid decision. Therefore, the relevant multiplier '14' has to be applied in the present case for computation of permanent disability instead of '15' applied by the Tribunal.

17. It is also the case of the petitioner that he sustained 40% disability and the same cannot be doubted keeping in view the medical evidence on record which shows that the petitioner suffered grievous injuries and that he cannot attend his regular labour work and cannot squat on the ground. In such circumstances, nothing could be found fault with the Tribunal in taking the percentage of disability at 40%. When applied the same, a sum of Rs.2,01,600/- ($\text{Rs.36,000/-} \times 14 \times 40\%$) can be granted towards 40% permanent disability as against the amount of Rs.90,000/- arrived at by the Tribunal and, accordingly, the said amount of Rs.2,01,600/- is awarded to the petitioner under the said head.

18. As far as the other amounts awarded by the Tribunal are concerned, viz., Rs.5,000/- towards shock, pain and suffering and also loss of amenities of life; Rs.20,000/- towards injury and Rs.5,000/- towards medical and incidental expenses, on perusal of the order of the Tribunal, it is

¹ [(2009) 6 SCC 121] {SC-DB}

to be noted that the Tribunal has well-considered while awarding the said amounts and there is no infirmity in granting the same, as such, the same are confirmed. Thus, the petitioner is entitled to Rs.2,31,600/- towards compensation as against the amount of Rs.1,20,000/- awarded by the Tribunal.

19. In view of the aforesaid discussion, the Motor Accident Civil Miscellaneous Appeal is allowed in part and the order and decree, dated 04.08.2010 passed by the Tribunal in O.P. No.2664 of 2008 is modified enhancing the compensation to Rs.2,31,600/- (Rupees Two Lakhs Thirty One Thousand and Six Hundred only) from 1,20,000/- awarded by the Tribunal. The enhanced amount of Rs.1,11,600/- (Rupees One Lakh Eleven Thousand and Six Hundred) shall carry interest @ 7.5% per annum from the date of petition till realization. However, there shall be no order as to costs.

As a sequel, miscellaneous petitions, if any, pending in the appeal shall stand closed.

August 02, 2019
Mgr

T. AMARNATH GOUD, J