

THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD

CMA NO. 4241 OF 2004

JUDGMENT:

This appeal is directed by the claimant against the award dated 20.09.2004 passed by the Motor Accidents Claims Tribunal-cum-IV-Additional Chief Judge, City Civil Court, Hyderabad (for short 'the Tribunal'), in O.P.No.2067 of 2002, whereby the tribunal awarded compensation of Rs.1,71,500/- as against the claim of Rs.5,00,000/-

2. For the sake of convenience, the parties herein are referred to as arrayed in the tribunal.

3. The case of the petitioner is that on 30.08.2002 at about 11.00 am, when he was standing to board jeep at Kodangal Road, Thandur in front of Ilahistan Polishing Company, a jeep bearing No. AP28U 8831 driven by its driver at fast speed in a rash and negligent manner came and hit him from behind, for which he fell on the road and it had ran over his legs and he sustained injuries to his both legs and that immediately, he was shifted to A.P.Vidya Vidhana Parishad and from there he was referred to Osmania General Hospital and was admitted as an in-patient and his right and left legs were amputated at knee level.

4. Respondent No.1 remained set exparte before the tribunal. Respondent No.2 – Insurance Company filed counter denying claim petition.

5. In order to prove the case of the claimants, PWs.1 to 3 were examined and marked Exs.A1 to A.9 on their behalf and except Ex.B.1 copy of policy, no oral or other documentary evidence is adduced on behalf of the respondents in support of their contentions. Basing on the pleadings, oral and documentary evidence, the tribunal framed the following issues:

- 1) Whether the petitioner sustained injuries in a motor accident that took place on 30.08.2002 due to rash and negligent driving of jeep bearing No.MH 06 C 4294 renumbered as AP 28 U8831?
- 2) Whether the petitioner is entitled for compensation, if so to what amount and from whom?
- 3) To what relief?

6. Learned counsel appearing for the insurance company vehemently opposed for enhancement of compensation and prayed to confirm the order passed by the tribunal as the compensation granted by the tribunal is just and not meager.

7. Admittedly, as per the evidence of PWs.2 and 3 and Ex.A.9- disability certificate, both the legs of the claimant are amputated and in the light of which, 70% disability can be taken as rightly arrived by the tribunal. The age of the petitioner is '38' years and he is doing fruit vending business by push cart. Even if the above version is disbelieved and if he is treated as agricultural coolie, the monthly income of the petitioner would be more than Rs.2,000/-, which has rightly considered by the tribunal. The award passed by the tribunal holds good in all aspects except that the tribunal has not granted any amount for future prospects and the amount

granted for the permanent disability is very meager. Therefore, this Court feels that an amount of Rs.3,000/- can be taken as monthly income and the annual income comes to Rs.36,000/-, which would be just and reasonable to consider the permanent disability and future prospects. Since the age of the deceased is '38', the relevant multiplier applicable is '15' as per the decision of the Apex Court in **Sarala Verma and others v Delhi Transport Corporation and another**¹. As per the decision of the apex Court in **National Insurance Company Ltd v Pranay Sethi**², the claimant is entitled for 40% future prospects since the claimant is self employed. Therefore, the claimant is entitled for Rs.3,78,000/- (Rs.36,000/- x 15 x 70%) towards permanent disability and Rs.2,16,000/- (Rs.36,000/- x 15 x 40%) towards future prospects. Thus, the claimant is entitled for total compensation of Rs.6,22,000/- (Rs.15,000/- + Rs.3,000/- + Rs.2,000/- + Rs.3,000/- + 5,000/- + Rs.3,78,000/- + Rs.2,16,000/-). The enhanced compensation amount shall carry interest 7.5% per annum from the date of petition till the date of realization. Though the claim is made for Rs.5,00,000/- in order to grant just and proper compensation for the reasons indicated above and in the light of the decision of the Apex Court in **Nagappa v Gurudayal Singh**³ the compensation awarded can be more than the claim, the present appeal needs to be allowed. Respondents are directed to deposit the compensation amount within three months from the date of this judgment. The injured claimant is entitled to withdraw the

¹ 2009 ACJ 1298

² 2017(7) 170 (SC)

³ 2003(2) SCC 274

compensation amount soon after the deposit is made. The injured claimant has to pay deficit court fee on over and above the claim amount and if the deficit court fee not paid as per Rule 475 of the M.V. Rules before the Tribunal, the injured cannot be permitted to execute for the enhanced amount.

8. In view of the above, the appeal is allowed. There shall be no order as to costs.

Miscellaneous petitions if any, shall stand closed.

Date: 17.09.2019
kvrn

T.AMARNATH GOUD,J

