

HONOURABLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A.No.575 of 2011

JUDGMENT:

This appeal is filed by the injured claimant under Section 173 of the Motor Vehicles Act aggrieved by the orders passed by the Motor Accidents Claims Tribunal-cum-III Additional Chief Judge, City Civil Court, Hyderabad (for short 'the Tribunal), in M.V.O.P.No.2105 of 2007 dated 02.12.2008, for the injuries sustained by him.

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

3. The brief facts of the case are that on 14.08.2007, at about 06.00 pm at Mallikarjuna Theatre, Hydernagar, while the appellant-injured claimant was proceeding on a motor cycle, the auto bearing No.AP-9-V-7551 which was driven by the 1st respondent-owner of the auto in rash and negligent manner and dashed the claimant due to which he sustained injuries and hospitalized and spent huge amount towards medical expenses and his claim is for Rs.4,75,000/-. According to the claimant, he is aged about 39 years, working as Faster and earning Rs.6,000/- per month.

4. The Tribunal has examined PWs.1 to 3 on behalf of the claimant and marked Exs.A1 to A12 and Ex.X1 and on behalf of the respondent, none were examined but Ex.B1 policy was marked. The Tribunal after framing the issues, allowed in part the claim of the claimant by awarding the compensation of

Rs.2,25,000/- . Aggrieved by the meager amount awarded by the Tribunal, the claimant preferred the present appeal.

5. With regard to issue No.1, the Tribunal relied upon the evidence of PW.1-injured claimant and PW.2-Doctor who examined the claimant and the manner in which the witness has explained the incident and in the light of Exs.A1 & A2 the certified copies of FIR and charge sheet, the Tribunal has come to the conclusion that the accident has taken place because of the rash and negligent driving of the driver of the auto and the issue has been answered in favour of the claimant and against the respondents. To this extent both sides have no dispute, but in so far as issue No.2 for computing the compensation is concerned, the Tribunal has taken into consideration the fractures sustained by the injured claimant-PW.1 of fibula left and fracture of 2 metacarpals and he underwent surgery and the Tribunal awarded an amount of Rs.60,000/- each to the 2 fractures which comes to Rs.1,20,000/- towards injuries and pain and suffering and in so far as medical expenses, as per Exs.A11-medical bills & A8-future estimation bill and PW.3 who testified the medical expenses, the Tribunal has awarded Rs.80,000/- towards medical expenses. In the light of Exs.A5 & A6-disability certificates issued by Medical Board and Dr. VKV Prasad, the Tribunal has accepted the 25% disability and to meet the disability, the Tribunal has awarded Rs.25,000/- as notional amount towards loss of earnings. It is to be noted here that once the disability certificate is considered and 25% disability

is accepted, it is not left open to the Tribunal to fix the notional income of Rs.25,000/- towards loss of earnings, but accordingly the Tribunal has erred in this regard and the only way to which the Tribunal is to consider the disability is in the light of **Sarla Varma Vs. Delhi Transport Corporation**¹ by applying the appropriate multiplier. Since the age of the injured claimant is 39 years, '15' multiplier is applicable and in view of he being self-employed as per Ex.A9 the salary of the claimant is Rs.6,680/-. Though Ex.A9 shows as Rs.6,680/- monthly income, no witness has been examined in support of said document. However in the claim petition he has undertaken that he was earning Rs.6,000/- per month by working as Faster. In view of self certification, this Court considers Rs.6,000/- towards his monthly income and as per the expression in **National Insurance Company Limited Vs. Pranay Sethi**², the claimant being self-employed and aged about 39 years, 40% future prospects can be taken into consideration, which comes to Rs.2,400/-, in all claimant monthly income comes to Rs.8,400/-. Out of Rs.8,400/-, 25% disability granted by the Medical Board, which comes to Rs.2,100/- per month and loss of earnings comes to Rs.2,100/- x 12 x 15 = Rs.3,78,000/- and the Tribunal has already awarded Rs.2,00,000/- towards 2 fractures and medical expenses which holds good and the total compensation to which the claimant is entitled to is Rs.5,78,000/-.

¹ 2009 (6) SCC 121

² 2017 (6) SCC 170

6. Accordingly and in the result, this Appeal is allowed by enhancing the amount awarded by the Tribunal to Rs.5,78,000/- from Rs.2,25,000/- with interest at 7.5% per annum from the date of petition till the date of realization. Though the claim is made for Rs.4,75,000/- 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. Both the respondents are directed to deposit the compensation amount jointly and severally within three months from the date of this judgment. The injured claimant is entitled to withdraw the 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. No costs.

Miscellaneous petitions if any shall stand closed.

T.AMARNATH GOUD, J

Date: 19.08.2019
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³ 2003(2) SCC 274