

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.1339 OF 2015

JUDGMENT:

This appeal is filed by the appellant/claimant aggrieved by the Order and Decree dated 24.08.2009 passed in O.P.No.1439 of 2007 by the Motor Accidents Claims Tribunal, at Hyderabad (for short, Tribunal).

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

3. The brief facts of the case are that the petitioner was aged about 32 years and he was hale and healthy and was a driver earning Rs.5,000/- per month and Rs.50/- per day as batha. On 14.03.2007 at about 7.30 p.m. near Anjaneya Swamy Temple, while the petitioner was standing at the accident spot, the crime lorry bearing No.ATK 4775 driven by its driver in a rash and negligent manner, came and dashed the motorcycle, as a result of which the petitioner sustained grievous injuries and he was hospitalized. Hence, the claimant filed the claim petition claiming compensation of Rs.10,00,000/-, payable by both the respondents, being the owner and insurer of the crime lorry.

4. Before the Tribunal, the 1st respondent remained *ex parte*. The 2nd respondent filed a counter denying the averments of the claim petition and contended that the amount claimed is excessive and prayed to dismiss the claim petition.

5. After considering the oral evidence of P.Ws.1 to 4 and R.W.1 and the documentary evidence of Exs.A-1 to A-7, Exs.B-1 to B-3 and Exs.X-1 & X-2, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the offending lorry and awarded total compensation of Rs.4,40,000/-, with interest @ 7.5% per annum from the date of petition till realization, i.e., Rs.3,80,000/- towards loss of disability, Rs.30,000/- towards medical expenses and Rs.30,000/- towards pain & suffering, payable by both the respondents. Dissatisfied with the quantum of compensation, the claimant filed the present appeal seeking enhancement of the compensation.

6. Heard Sri K.Hari Mohan Reddy, learned counsel for the claimant and Smt. I.Maamu Vani, learned standing counsel for the 2nd respondent/insurance company. Perused the material record.

7. Admittedly, insofar as the disability is concerned, as per Ex.A-5-Disability Certificate and the evidence of P.W.2, the doctor who treated the claimant, the disability of the claimant is shown as 40%. Therefore, the Tribunal also fixed the disability of the petitioner @ 40%. In the facts and circumstances of the case, this Court is also inclined to fix the disability of the claimant @ 40%. With regard to the income of the claimant is concerned, as per the evidence of P.W.3, who is the co-employee of the claimant, the claimant used to earn Rs.5,000/- per month

besides Rs.50/- per day as batha, but the Tribunal has erroneously taken the monthly income of the claimant @ Rs.5,000/- per month. Therefore, this Court is inclined to consider the monthly income of the claimant @ Rs.6,500/- (Rs.5,000/- + Rs.1,500/- (Rs.50/- X 30 days) per month. Since the age of the claimant is 32 years at the time of the accident, the multiplier applicable is '16' as per the decision reported in **Sarla Verma and others v. Delhi Transport Corporation and Another**¹, but the Tribunal has wrongly taken the multiplier as '15.82'. Therefore, the compensation under the head of 'loss of disability' comes to Rs.4,99,200/- (Rs.6,500/- X 12 X 16 X 40%). The amounts granted by the Tribunal towards medical expenses @ Rs.30,000/- and pain & suffering @ Rs.30,000/- remains unchanged. Therefore, the total compensation comes to Rs.5,59,200/- (Rs.4,99,200/- + Rs.30,000/- + Rs.30,000/-). Except the above modification, the rest of the award remains unchanged.

8. In the result, the appeal is partly allowed enhancing the compensation amount awarded by the Tribunal from Rs.4,40,000/- to Rs.5,59,200/-, payable by both the respondents jointly and severally. The enhanced amount shall carry interest @ 7.5% per annum from the date of petition till realization. The respondents are directed to deposit the enhanced amount along with proportionate costs and interest within two (02) months from the date of receipt of a copy of this

¹ (2009) 6 SCC 121

order. On such deposit, the claimant is permitted to withdraw the entire amount. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 9th December, 2019

KL

