THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA No.3400 of 2005

JUDGMENT::

The claimant has preferred this appeal against judgment and award passed by IV Addl. Metropolitan Sessions Judge-cum-XVIII Addl. Chief Judge, Hyderabad, (Motor Accident Claims Tribunal), (hereinafter referred to as "Tribunal") in Original Petition (OP) No.1977 of 2003, seeking for enhancement of compensation awarded by the Tribunal at Rs.4,08,000/- as against the claim of Rs.10,50,000/-. 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 tipper lorry bearing registration No.AP 22 A 8974. Respondent No.2 is the insurer thereof.

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 offending tipper lorry 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. 26-02-2003, the claimant was going on a scooter bearing registration No.AP 22A 8974 from Mannanur village to Tirumalapur and at about 4-00 pm and when reached near petrol bunk, the offending tipper lorry came from opposite direction in high speed and in a rash and negligent manner and dashed against the claimant's scooter due to which he fell down on the road and the tipper lorry ran over his right hand resulting in his right hand crushed. That the claimant was initially shifted to Government Hospital at Achampet, where he was given first-aid and thereafter shifted to Yashoda Hospital, Malakpet, Hyderabad, where he was treated as in-patient from 26-02-2003 to 03-04-2003. A case in Cr.No.14 of 2003 was also registered against the driver of the tipper lorry. That prior to the date of the accident, the claimant was working as driver of the lorry bearing registration no.AP 09 U 2152 and getting a monthly salary of Rs.4,000/- plus Rs.50/- batta per day.

That due to the accident, his right hand was amputated and he became permanently disabled and unfit to drive the lorry. That the claimant was the only earning member in the family and as on the date of the accident he was aged 35 years. That the accident occurred due to the rash and negligent driving of the driver of the tipper lorry 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 parties, awarded compensation of Rs.4,08,000/- as against the claim of Rs.10,50,000/-. 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 in motor vehicular accident which occurred on the fateful day, the claimant's right hand above elbow level was amputated, which has the impact of loss of 100% earning capacity of the claimant. He submits that the Tribunal assessed a meagre notional income at the rate of Rs.2,000/- per month annually Rs.24,000/- and having applied multiplier "17"

(24,000 x 17 = Rs.4,08,000/-) awarded a sum of Rs.4,08,000/- in all. Learned counsel contended that the Tribunal did not grant any amounts towards loss of future prospects, loss of future income in proper perspective and no compensation was awarded under the heads of pain and suffering, medical bills, attendant charges, transportation charges, though the claimant is entitled for the compensation under these heads.

08. Learned counsel for respondent-insurance company, on the other hand, submits that the notional income considered by the Tribunal is appropriate as there was no proof produced in support of the pleading that the claimant was earning a sum of Rs.4,000/- plus Rs.50/- batta per day. Learned counsel further contended that considering the overall facts and circumstances of the case, the Tribunal granted just and reasonable compensation and the same needs no interference.

09. It is to be seen that to prove the disability, the Doctor who has operated upon the claimant has been examined as PW-3. The claimant himself is examined as PW-1. A perusal of the discharge

summary issued by the hospital under Exs.A-4 and A-5 goes to show that the right hand of the claimant was amputated above elbow level and it is an undisputed fact that as a result of the amputation PW-1 (claimant) would be unfit to drive any vehicle in his life time. No ordinary employer will provide the claimant employment even as a casual labour. On account of amputation of his powerful right hand, he would not be able to work even as a coolie which also requires help of both hands for lifting the goods. In these fact situations, I have no hesitation to hold that on account of amputation of right hand the claimant has sustained 100% loss of earning capacity.

10. The claimant has pleaded and deposed as PW-1 that prior to the date of the accident he was earning Rs.4,000/- per month and Rs.50/- daily batta by driving the lorry and he also got examined the owner of the lorry of which he was the driver as PW-2. PW-2 categorically stated that he has been paying a sum of Rs.4,000/- per month as salary and Rs.50/- daily batta to PW-1 for working as driver of his lorry. No contra evidence was adduced to disprove this evidence. But, the Tribunal disbelieved their version and took the

notional income of the claimant at Rs.2,000/- per month, which is incorrect and not traceable to any judicial reasoning. In ***RAMACHANDRAPPA vs. THE MANAGER, ROYAL SUNDARAM ALLIANCE INSURANCE COMPANY LIMITED***[1], the Supreme Court ruled that in respect of a coolie a monthly income of Rs.4,500/- can be taken. The claimant is aged 35 years as on the date of the accident and his income can be safely taken at Rs.4,500/- per month by following the ratio in ***RAMACHANDRAPPA's*** case. Even otherwise also the evidence of PW-1 and PW-2 goes to show that the claimant was earning Rs.4,000/- per month besides Rs.50/- per day as batta which comes to Rs.5,500/-. The Tribunal eschewed this evidence only on the ground that PW-2 did not produce any letter of appointment of PW-1. The claimant who claims to have worked as driver cannot be expected to produce any documentary evidence in proof of his occupation as driver. In my considered view the evidence adduced is sufficient and inspires the confidence of the Court as to the earnings of the claimant as driver. Curiously, the Tribunal also failed to award any amounts towards medical bills

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[1] (2011) 13 SCC 236

which are marked as Ex.A-6 (bunch), transportation charges which is marked as Ex.A-8, pain and suffering, attendant charges, loss of earnings for the period during which he underwent treatment. There is no discussion as to why the Tribunal chosen not to disallow the medical expenses incurred by the claimant. Under Ex.A-6 bunch of medical bills issued by the Yashoda Super Speciality Hospital at Malakpet, Hyderbad, amounted to Rs.2,49,936/-. Even on an average an amount of Rs.49,936/- is deducted towards peripherals, an amount of Rs.2,00,000/- can be allowed towards medical expenses for treatment of amputation.

11. 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 by the Tribunal which is otherwise admissible.

12. 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.

13. 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

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[2] (2010) 10 SCC 254
[3] (2011) 1 SCC 343

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

<u>Pecuniary damages (Special Damages):-</u>
(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.

<u>Non-pecuniary damages (General Damages):-</u>
(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).

14. 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.

15. In ***JAGDISH vs. MOHAN***[4], three Judge bench of the Supreme Court directed that the principles laid down in ***Arvind***

[4] AIR 2018 SC 1347

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 right hand of the claimant above elbow level was amputated and the claimant being a driver which is discernable from Ex.A-11 driving licence coupled with his own evidence and the evidence of his employer PW-2.

16. In view of the law laid down in the case ***Raj Kumar vs. Ajay Kumar*** (3 supra), in injury claim, there cannot be any deductions towards personal expenses of the injured. Therefore, considering the age of the injured claimant as 35 years, and his monthly income is taken at Rs.4,500/-, which annual comes to (Rs.4,500 x 12 = Rs.54,000/-). As the claimant was below the age of 40 years, in view of the verdict in ***NATIONAL INSURANCE COMPNAY LIMITED vs. PRANAY SETHI***[5], 40% income is to be added toward loss of future prospects and 40% of Rs.4,500/- comes to Rs.1,800/- i.e. Rs.4,500 + Rs.1,800 = Rs.6,300/-. Considering the age of the

[5] AIR 2017 SC 5157

claimant at 35 years, the appropriate multiplier as per the decision in ***SARLA VARMA vs. DELHI TRANSPORT CORPORATION***[6], is "16". Thus, claimant is entitled to a sum of (Rs.6,300 x 12 x 16 Rs.12,09,600/-) Rs.12,09,600/- towards loss of future income.

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

Loss of future earnings	**:-**	**Rs. 12,09,600/-**
Medical expenses	**:-**	**Rs. 2,00,000/-**
Pain and suffering	**:-**	**Rs. 30,000/-**
Loss of earnings (hospitalization period)	**:-**	**Rs. 4,500/-**
Transportation charges	**:-**	**Rs. 3,600/-**
Attendant charges	**:-**	**Rs. 10,000/-**
Total:-	**:-**	**Rs. 14,57,700/-**

(Rupees Fourteen Lacs Fifty Seven Thousands and Seven Hundred only)

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.14,77,700/- with interest @ 7.5 % per annum. It is

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6 AIR 2009 SC 3104

needless to observe that the claimant is liable to pay Court fee on the enhanced compensation and subject to payment of Court fee, the claimant is permitted to withdraw the amounts now awarded. 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
NRG

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA No.3400 of 2005

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