

THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD

MACMA NO. 165 OF 2015

JUDGMENT:

This appeal is directed against the order dated 17.11.2014 passed by the Motor Accidents Claims Tribunal-cum-IX-Additional District Judge, Wanaparthy (for short 'the Tribunal'), in O.P.No.302 of 2012 whereby the Tribunal awarded compensation of Rs.85,000/- on account of the injuries caused in a motor vehicle accident that occurred on 16.04.2011 against the claim of Rs.1,50,000/-.

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

3. Being dissatisfied with the quantum of order passed by the Tribunal, the injured filed this appeal seeking enhancement of compensation contending that the tribunal disbelieved the disability certificate Ex.A.10 though issued by PW.2, who is member of the District Medical Board on the ground that Ex.P.10 is issued two years after the accident and after filing the claim petition and that the compensation granted by the tribunal is meager on all heads.

4. There is no dispute with regard to the manner of accident and involvement of the vehicle. PW.2, who happens to be the member of the District Medical Board issued Ex.A.10-disability certificate finding that the injured claimant sustained 25%

disability i.e. post traumatic sequelee right lower limb with restricted movement of hip and knee joint. The delay in obtaining Ex.A.10-disability certificate is not the ground to deny the entitlement of the claimant as Ex.A.10 is not denied that it is not genuine.

5. Learned counsel for the appellant relied on judgment of this Court in **Mohd. Asif Khan v Mohd. Iran**¹ that the disability certificate can be issued not only by the doctor who treated the patient but also by any qualified doctor since the fractures may heal at later stage and the delay is to be condoned in the interest of the claimant. In view of the above, this Court feels that Ex.A.10-disability certificate can be considered and 25% disability is accepted.

6. It is seen from the pleading in OP and the complaint filed before the Station House Officer, FIR and also the charge sheet indicates that the claimant is running business of hair cutting saloon in Pebbair, which is in municipal headquarters. As per decision of the apex Court in **Ramachandrappa v Royal Sundaram Alliance Insurance Co. Ltd.**² in the absence of proof of income, in case of labour is considered as Rs.4,500/- i.e. way back in the year 2011. In **Syed Sadiq and others v United India Insurance Company Limited**³ the Apex court considered the notional income of vegetable vendor as Rs.6,500/-. In view of price hike and inflation, this Court feels that in the true spirit of the

¹ Laws (APH) 2014 6 95

² (2011) 13 SCC 236

³ (2014) 2 SCC 735

accident claims matters just and proper compensation need be awarded and accordingly, in the absence of proof of income, notional income of Rs.7,500/- per month can be taken, which is reasonable. Since the age of the claimant is 25 years, the relevant multiplier is '18' as per the decision of the Apex Court in **Sarala Verma and others v Delhi Transport Corporation and another**⁴. In all other aspects, the award of the tribunal holds good.

7. The income of the injured is Rs.7,500/- per month and the annual income is Rs.90,000/- (Rs.7500/- x 12). Applying the relevant multiplier '18, as the age of the injured taken as 25 years and as per the **SARALA VERMA's** case referred supra, 25% permanent disability can be quantified at Rs.4,05,000/-(90,000/- x 18 x 25%). Thus, the injured is entitled for a total compensation as follows:

1. Permanent disability at 25%	Rs.4,05,000/-
2. Compensation for pain and suffering	Rs. 45,000/-
3. Loss of earnings	Rs. 15,000/-
4. Medicines purchased from outside	Rs. 4,513/-
5. transport and extra nourishment	Rs. 5,000/-
6. Surgery for removal of implants	Rs. 15,000/-
Total	Rs. 4,89,513/-

Thus, the injured is entitled for Rs.4,89,513/- rounded of Rs.4,90,000/- (Rupees four lakhs ninety thousand only). The compensation amount shall carry interest 7.5% per annum from the date of petition till the date of realization. Though the claim is

⁴ 2009 ACJ 1298

made for Rs.1,50,000/- 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**⁵ the compensation awarded can be more than the claim, the present appeal needs to be allowed. 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.

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: 16.08.2019
kvrn

T.AMARNATH GOUD,J

⁵ 2003(2) SCC 274