

THE HONOURABLE SRI JUSTICE K.LAKSHMAN

MACMA. No.1505 of 2006

JUDGMENT:

Feeling aggrieved by the order dated 20.01.2006 passed in M.V.O.P. No.122 of 2002 by the Special Judge for the Trial of Offences under SCs & STs (POA) Act-cum-VI Additional Metropolitan Sessions Judge-cum-XX Additional Chief Judge, Secunderabad, appellant/claimant preferred the present appeal.

The learned Tribunal has awarded an amount of Rs.19,130/- towards compensation with interest at the rate of 6% per annum, from the date of petition till its realization as against the claim of Rs.2,00,000/- made by the appellant/claimant.

On consideration of the entire evidence on record, the learned Tribunal gave a finding that the accident was due to rash and negligent driving of the driver of the offending vehicle. Admittedly, the 2nd respondent, Insurance Company, herein did not file any appeal challenging the said finding. Therefore, the said finding has attained the finality.

The only issue that falls for consideration before this Court is with regard to the quantum of compensation.

It is the specific contention of the learned counsel for the appellant/claimant that due to the accident, appellant sustained grievous injuries i.e. *“minor abrasion over the right upper limb and face and the injury to the thumb and right lower lip and that the petitioner also suffered blunt injury to the head besides blunt injury to the abdomen and tenderness in the right hypochondrium and*

swelling and tenderness over the left thigh, left knee, left ankle, left foot and movements were restricted and that the petitioner also suffered blunt injury to the right side posterior and lateral chest and that tenderness was present over the thoracic spire.” In support of his contention to the effect of injuries, injured filed Exs.A-4 to A-7 and A-11, certified copy of accident register, X-ray, X-ray report, bill dt.29.07.2003, original disability certificate issued by Dr.G.Subhash Rao and Disability certificate issued by Dr.Sachichandra, respectively. He also relied upon Ex.X-1, case sheet. According to him, the appellant sustained grievous injuries in the manner stated supra.

The learned counsel for the appellant further contended that at the time of accident, appellant was aged 25 years and he used to do agricultural work and he owns Ac.1.30 guntas of land. In proof of having land, he filed Exs.A-8 and A-9, certified copy of addangal/pahani for the year 2001-2002 and certified copy of ‘choupals’ for the year 2001-2002, respectively, and submitted that the appellant used to earn an amount of 3,000/- per month. He placed reliance on the judgment of the Apex Court in **RAMACHANDRAPPA Vs. MANAGER, ROYAL SUNDARAM ALLIANCE INSURANCE COMPANY LIMITED**¹ wherein for a person who works as a cooli, monthly income was taken as Rs.4,500/-. Whereas in the present case, the appellant was granted an amount of Rs.1,000/- on the ground that the appellant must have been prevented from attending to his agricultural activities at least about one month. He further contended that the learned Tribunal has failed to consider Exs.A-7 and A-11.

¹ (2011) 13 Supreme Court Cases 236

On the other hand, the learned Standing Counsel appearing for the 2nd respondent, Insurance Company herein, would contend that the learned Tribunal gave a specific finding that the doctor, P.W.2, who was examined by the appellant, was found to be a stock witness by the Courts at Secunderabad. With the said reason, the learned Tribunal did not consider Ex.A-7, disability certificate. He would further contend that the learned Tribunal gave a finding with regard to the Ex.A-11 that Dr.Sachichandra, who issued the said certificate, was also not examined. On the said grounds, he would contend that the learned Tribunal rightly gave the above said findings and not considered the Exs.A-7 and A-11. With the said contentions, the learned Standing counsel for the Insurance Company would contend that the learned Tribunal has rightly awarded an amount of Rs.19,130/- towards compensation with interest at the rate of 6% per annum and therefore, there is no circumstances or any grounds warranting interference by this Court with the impugned award.

Apart from the above, the learned counsel for the appellant/ claimant would contend that the appellant need not examine the doctor, who issued the disability certificate. In support of his contention he placed reliance on the judgments reported in **RAJ KUMAR Vs. AJAY KUMAR AND ANTOHER²**, **KARUNAKARAN Vs. ABDUL RASHEED AND OTHERS³**, **HARDEEP KAUR AND OTHERS Vs. SHAMSHER SINGH⁴** and **CHARAN SINGH Vs. G.VITTAL REDDY⁵**.

² (2011) 1 Supreme Court Cases 343

³ 2016 ACJ 2445

⁴ 2016 ACJ 1973

⁵ 2003 (4) ALD 183

In the aforesaid judgments, including the Division Bench judgment of this Court in **Charan Singh** (5th supra), it is categorically held that the injured need not examine the doctor, who has examined him and who has issued the disability certificate. Hon'ble Division Bench of this Court also gave a finding that the doctor, who treated the injured, may not be available for various reasons and the injured cannot be expected to stay at a particular station forever. Further, the permanent disability cannot be assessed immediately on the next day of sustaining the injuries. In order to assess the permanent disability, naturally, wounds have to be healed so as to make assessment of the permanent disability in relation to loss of earning capacity. With the said findings, the Hon'ble Division Bench of this Court categorically held that the claimant/injured need not examine the doctor, who issued the disability certificate.

In the present case, the learned Tribunal did not consider Exs.A-7 and A-11 disability certificates on the grounds that the doctor, who issued Ex.A-7 is a stock witness and the injured did not examine the doctor, who issued Ex.A-11, respectively. In view of the principle held by the Division Bench of this Court and also in other cases referred to hereinabove 2 to 5 supra, finding of the learned Tribunal is not correct and therefore, the same is not sustainable. However, the Insurance Company also did not disprove Exs.A-7 and A-11, disability certificates, and there is no contra evidence. In view of the above, this Court is of the view that taking into consideration Exs.A-7 and A-11, disability certificates, disability sustained by the appellant can be considered as 35%.

It is not in dispute that the appellant/claimant was an agriculturist owning Ac.1.30 guntas of land. In support of the same, he has filed Exs.A-8 and A-9, certified copies of revenue records. The Hon'ble Apex Court in **Ramachandrappa** (1 supra) case it is held that for a person who works as a cooli, monthly income shall be considered as Rs.4,500/-. Since the appellant sustained grievous injuries i.e. *“minor abrasion over the right upper limb and face and the injury to the thumb and right lower lip and that the petitioner also suffered blunt injury to the head besides blunt injury to the abdomen and tenderness in the right hypochondrium and swelling and tenderness over the left thigh, left knee, left ankle, left foot and movements were restricted and that the petitioner also suffered blunt injury to the right side posterior and lateral chest and that tenderness was present over the thoracic spine”* finding of the learned Tribunal considering monthly income of the appellant as Rs.1,000/- is found erroneous. However, since the appellant/claimant himself claimed that his monthly income is Rs.3,000/-, the same is considered as his monthly income.

Since the learned counsel for the appellant submitted that the age of the appellant was 25 years, at the time of the accident, and there is no contra from the other side on this aspect, appellant age is considered as 25 years and appropriate multiplier for the said age group is 18 according to the **SARALA VERMA Vs. DELHI TRANSPORT CORPORATION**⁶.

⁶ (2009) 6 SCC 121

In view of the above, the appellant/claimant is entitled to an amount of Rs.2,26,800/- (3000 x 12 x 35%) towards compensation.

Apart from the above, the appellant is also entitled to Rs.5,000/- towards transportation and Rs.10,000/- towards extra nourishment. Since the appellant was admitted in the Gandhi Hospital for three days from 25.11.2001 to 27.11.2001 as in-patient and thereafter, he might have taken rest for a period of three months, he is entitled to an amount of Rs.9,000/- (3000 x 3) towards loss of three months earnings. Further, appellant is also entitled to an amount of Rs.130/- towards medical expenses as held by the learned Tribunal by considering the Ex.A-6. Further, he is also entitled to an amount of Rs.1,000/- towards damages to the cloths.

Thus, in all, appellant is entitled to an amount of Rs.2,51,930/- (Rupees two lakhs fifty one thousand nine hundred and thirty only) as compensation under the following heads:

i)	35% Disability	...	Rs.2,26,800/-
ii)	Transportation	...	Rs.0,05,000/-
iii)	Extra nourishment	...	Rs.0,10,000/-
iv)	Loss of earnings	...	Rs.0,09,000/-
v)	Medical expenses	...	Rs.0,00,130/-
vi)	Damages to cloths	...	Rs.0,01,000/-

			Rs.2,51,930/-

Thus, the said amount of Rs.2,51,930/- (Rupees two lakhs fifty one thousand nine hundred and thirty only) is awarded as compensation which is just and reasonable

Since the learned Tribunal had awarded interest at the rate of 6% per annum, this Court feels to enhance the same to 7.5% per annum. Accordingly, the appellant is entitled to interest at the rate of 7.5% per annum from the date of petition till its realization.

It is pertinent to mention here that this Court is having power to grant just and reasonable compensation to which the appellant is entitled to as held by the Hon'ble Apex Court in **RAMLA Vs. NATIONAL INSURANCE COMPANY LIMITED**⁷. The appellant shall however pay requisite differential Court fee on the enhanced compensation within one month from the date of receipt of certified copy of the judgment.

The 2nd respondent, Insurance Company, is directed to deposit the above said amount with interest and costs, after deducting the amount, which was already deposited, if any, within one month, from the date of receipt of a certified copy of this judgment.

In the result, this appeal is allowed. There shall be no order as to costs.

As a sequel, miscellaneous applications, if any pending, shall stand closed.

JUSTICE K.LAKSHMAN

Date: 05.02.2020
LSK

⁷ (2019) 2 SCC 192

