

THE HONOURABLE SRI JUSTICE K.LAKSHMAN

MACMA. No.2464 of 2006

JUDGMENT:

Feeling aggrieved by the order dated 07.03.2006 passed in M.V.O.P. No.12 of 2005 by the Principal Motor Accidents Claims Tribunal (Principal District Court) at Warangal, appellant/claimant preferred the present appeal seeking enhancement of the compensation.

The learned Tribunal has awarded an amount of Rs.2,58,000/- towards compensation with interest at the rate of 7.5% per annum, from the date of petition till its deposit as against the claim of Rs.3,20,000/- made by the appellant/claimant.

On consideration of the entire evidence on record, the learned Tribunal gave a specific finding that the accident was due to rash and negligent driving of the Auto driver. Admittedly, the 2nd respondent, Insurance Company, 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 contention of the learned counsel for the appellant that the appellant/injured was aged 44 years, as on the date of the accident i.e. 08.03.2000. He used to work as labour and used to earn Rs.100/- per day. The learned Tribunal, on the analysis of the evidence on record, considered the age of the appellant as 44 years. In the absence of any contra evidence, the learned

Tribunal is right in considering the age of the appellant as 44 years.

As per the principle held by the Hon'ble Apex Court in **SARALA VERMA Vs. DELHI TRANSPORT CORPORATION**¹ appropriate multiplier would be 14, but the learned Tribunal has wrongly considered the multiplier as 15. Therefore, the multiplier has to be considered as 14 by following the principle held by the Hon'ble Apex Court in **Sarala Verma** (one supra).

With regard to earning capacity of the appellant, it is specific contention of the appellant that he used to work as labour and used to earn Rs.100/- per day and Rs.3,000/- per month, as on the date of accident i.e. on 08.03.2000. The learned Tribunal, on the analysis of the deposition of P.W.1, considered the amount of Rs.24,000/- per annum as earning capacity of the appellant.

In this regard, following the principle held in the judgment of the Apex Court in **RAMACHANDRAPPA Vs. MANAGER, ROYAL SUNDARAM ALLIANCE INSURANCE COMPANY LIMITED**², wherein, for a person who works as a cooli, monthly income was taken as Rs.4,500/-. Whereas, in the present case, though the appellant specifically contended that he used to earn Rs.100/- per day and Rs.3,000/- per month by doing labour work, the learned Tribunal, without giving any reason, considered monthly income of the appellant as Rs.2,000/-. Therefore, this Court is of the view that an amount of Rs.4,500/- shall be

¹ (2009) 6 SCC 121

² (2011) 13 Supreme Court Cases 236

taken into consideration as monthly earning capacity of the appellant.

It is also the case of the appellant that he received serious and grave injuries due to the accident and the injuries are “*Compound Grosly comminuted fracture of the femoral condyle of right knee joint. 2. Closed head injury.*” In proof of the same, the appellant filed Exs.A-2 to A-11 including the wound certificate and discharge card etc. The appellant examined the doctor, who treated him, as P.W.2.

On the analysis of the entire evidence on record, both oral and documentary, particularly evidence of P.W.2, doctor, and Ex.A-9, disability certificate, the learned Tribunal gave a finding that the appellant suffered 50% disability.

It is further contention of the learned counsel for the appellant that the appellant sustained fracture of right knee as a result, he could not climb trees for tapping toddy and he could not undertake any labour work and therefore, he lost his earnings. According to the learned counsel for the appellant, apart from the tapping toddy, appellant used to do agriculture and he also owns land. But the appellant did not file any proof to show that he is owning land and doing agriculture. However, by taking into consideration 50% disability, as deposed by the P.W.2 doctor, who is expert in the field and Ex.A-9, disability certificate, compensation has to be awarded to the appellant. Accordingly, 50% disability is considered.

As discussed supra, the age of the appellant, as on the date of the accident is 44 years and as per the principle held by the Apex Court in **Sarala Verma** (one supra), multiplier should be considered as 14. Therefore, the monthly earning capacity of the appellant is to be considered as Rs.4,500/- per month in the manner stated above. Therefore, the appellant is entitled to an amount of Rs.4,500 x 12 x 14 x 50% Rs.3,78,000/-).

Apart from the above, the appellant is also entitled to an amount of Rs.5,000/- towards transportation and Rs.1,000/- towards damage to the cloths.

It is the contention of the appellant that he was shifted to Government Civil Hospital for treatment as in patient. After discharge from the said hospital, as he was getting sever pain he was admitted in Rohini hospital at Hanmakonda, where he was operated on 19.03.2000 by closed manipulation KY-wire fixation and colonial pin fraction and discharged on 31.03.2000 with an advice to take bed rest for three months. He again further admitted in the hospital and took treatment as in patient from 24.06.2000 and KY-wires were removed and discharged on 03.07.2000. Further he again admitted in the hospital on 13.09.2000 and discharged on 14.09.2000. According to the appellant he spent an amount of Rs.60,000/- towards medicines and treatment and also attendant was there along with him. In support of the same, the appellant filed Ex.A-10, bunch of medical bills for an amount of Rs.57,924/- and the learned Tribunal rightly awarded an amount of Rs.58,000/- towards medical expenses. In view of the said facts, more particularly

treatment taken by the appellant on the above said dates as in patient, an amount of Rs.8,000/- (2000 x 4) is awarded towards attendant charges. Further, Rs.25,000/- towards extra nourishment is also awarded. Since the learned Tribunal awarded an amount of Rs.20,000/- towards pain and suffering the same is confirmed.

Thus, in all, appellant is entitled to an amount of Rs.4,37,000/- (Rupees four lakhs thirty seven thousand only) as compensation under the following heads:

i)	50% disability	...	Rs.3,78,000/-
ii)	Transportation	...	Rs.0,05,000/-
iii)	Damage of cloths	...	Rs.0,01,000/-
iv)	Attendant charges	...	Rs.0,08,000/-
v)	Extra nourishment	...	Rs.0,25,000/-
vi)	Pain and suffering	...	Rs.0,20,000/-

			Rs.4,37,000/-

Thus, the said amount of Rs.4,37,000/- (Rupees four lakhs thirty seven thousand only) is awarded as compensation, which is just and reasonable with interest at the rate of 7.5% per annum thereon from the date of petition till the date of deposit.

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 LIMITED³.

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 this 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.

Date: 06.02.2020
LSK

JUSTICE K.LAKSHMAN

³ (2019) 2 SCC 192