THE HON'BLE SRI JUSTICE K. LAKSHMAN

M.A.C.M.A. No.2057 OF 2006

JUDGMENT:

Heard Mr. V. Sambasiva Rao, learned counsel appearing for the appellant - Insurance Company and Mr. V. N. Anagani, learned counsel for respondent No.1 - Claimant.

2. The record discloses that the appeal against respondent No.2 - owner of accident vehicle, was dismissed by this Court vide order dated 07.04.2017.

3. Feeling aggrieved by the award dated 20.03.2006 in O.P. No.170 of 2004 passed by the Motor Accidents Claims Tribunal - cum - II Additional District Judge, Karimnagar at Jagtial (for short 'the Tribunal'), respondent No.2 - M/s. United India Insurance Company Limited preferred the present appeal.

4. Vide aforesaid Award, the Tribunal has awarded an amount of Rs.2,00,000/- (Rupees two lakhs only) towards compensation as against the claim of Rs.10,25,300/- (Rupees ten lakhs twenty five thousand and three hundred only) made by respondent No.1 - petitioner with proportionate costs and interest @ 7.5% per annum thereon from the date of petition till the date of realization. The Tribunal fixed the liability against respondent Nos.1 and 2 jointly and severally with a direction to deposit the said amount within one month. It permitted respondent No.1 - petitioner to withdraw a sum of Rs.50,000/- and the remaining amount was ordered to be kept in fixed deposit in any Nationalized Bank.

5. The only contention of learned counsel for the appellant - Insurance Company is that the Tribunal erred in awarding an amount of Rs.50,000/- (Rupees fifty thousand only) towards diminution in earning capacity and loss of post retiral employment as respondent No.1 - Claimant neither pleaded nor produced any evidence before the Tribunal. However, the learned counsel would submit that apart from the said amount of Rs.50,000/-, there is no reason given with regard to other amounts awarded by the Tribunal under various heads mentioned in paragraph No.15 of the Award. According to him, the finding of the Tribunal that after retirement there is chance of Claimant being employed in some private institutions on account of his rich experience as a Lecturer and as private managements cannot accept persons of disability to be the Lecturers, opportunities of the Claimant to get post retiral employment are bleak is unsustainable as the same is not based on any evidence either oral or documentary.

6. On the other hand, learned counsel for respondent No.1 - Claimant would contend that the Tribunal considered all aspects including future prospects of the injured employee and granted the said amount of Rs.50,000/- towards diminution in earning capacity and loss of post retiral employment. In support of the same, the learned counsel relied upon a decision in **National Insurance Company Limited v. Pranay Sethi**[1], which is a case of deceased. In the said case, the Apex Court while determining the income, an addition of 50% of actual salary should be made to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years. The addition should be 30% if the age of the deceased was between 40 to 50 years. In

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[1]. (2017) 16 SCC 680

case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax. The learned counsel for respondent No.1 - Claimant has also relied upon another judgment in **Raj Kumar v. Ajay Kumar**[2], which is a case of injuries. In the said case, the Apex Court considered the assessment of loss of future earnings with illustrations (A) and (B) and gave the calculations.

7. By referring the aforesaid judgments, the learned counsel for respondent No.1 - Claimant would submit that the Tribunal did not commit any error in awarding an amount of Rs.50,000/- towards diminution in earning capacity and loss of post retiral employment.

8. On perusal of the entire record, admittedly, respondent No.1 was a Lecturer in Government Junior College, Dharmapuri, Karimnagar District at the relevant point of time i.e. as on the date of accident. Since respondent No.1 is having experience in teaching, there would be future prospects to him. The Tribunal considering the same and analyzing of the entire evidence gave a finding that in view of the fact that after the retirement there is chance of his being employed in some private institutions on account of his rich experience as a Lecturer and as private managements cannot accept persons of disability to be the Lecturers, opportunities of the Claimant to get post retiral employment are bleak and accordingly awarded the said amount of Rs.50,000/- towards diminution in earning capacity and loss of post retiral employment. There is no other evidence in support of the appellant - Insurance Company.

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[2]. (2011) 1 SCC 343

9. In view of the principle laid down by the Apex Court in the aforesaid decisions and also the specific finding given by the Tribunal, this Court is of the opinion that there is no error committed by the Tribunal in awarding an amount of Rs.50,000/- as compensation towards diminution in earning capacity and loss of post retiral employment, more particularly by taking into account the disability suffered by respondent No.1 - Claimant. Therefore, this Court do not see any reason to interfere with the findings given by the Tribunal in the impugned Award and accordingly the appeal fails.

10. In the result, the Appeal is dismissed, confirming the award dated 20.03.2006 in O.P. No.170 of 2004 passed by the Tribunal. However, there shall be no order as to costs.

As a sequel, miscellaneous applications, if any, pending in the appeal stand closed.

JUSTICE K. LAKSHMAN

22nd JANUARY, 2020
Mgr