THE HONOURABLE SRI JUSTICE K.LAKSHMAN

M.A.C.M.A.No.1907 OF 2006

JUDGMENT:

Heard learned counsel for the appellant and learned counsel for respondent No.2/insurance company.

2. Feeling aggrieved by the award and decree dated 10.09.2004 in O.P.No.2754 of 2001 passed by the X Additional Chief Judge, (FTC) City Civil Court, Hyderabad (for short 'the Tribunal), the appellant/injured claimant preferred the present appeal.

3. Vide the aforesaid award, the Tribunal has granted an amount of Rs.91,200/- towards compensation as against claim of Rs.2,00,000/- with proportionate costs and interest @ 9% per annum from the date of petition till the date of realisation. Admittedly, the 2nd respondent/insurance company did not file any appeal challenging the said finding and hence, the said finding attained finality.

4. The only question falls for consideration by this Court is with regard to the quantum of compensation.

5. The Tribunal on consideration of the entire material available on record including Ex.A.3-injury certificate and Ex.A.5-certificate came to the conclusion that the age of the injured was 42 years at the time of accident. According to this Court, there is no error in the said finding.

6. To prove the monthly income of the appellant, he filed Ex.A.9, salary certificate and also examined PW.3-Managing Partner of the bore well. The contention of learned counsel for the appellant is that at the time of accident, the appellant used to work as Supervisor on the bore well belongs to PW.3 and used to get an amount of Rs.3,500/- towards monthly salary. But the Tribunal without giving any finding on Ex.A.9-salary certificate and the deposition of PW.2, considered the annual earnings of the appellant as Rs.15,000/- without any basis. As stated supra, the appellant examined PW.3-Managing Partner of the bore well and filed Ex.A.9-salary certificate. In the absence of any contra evidence and also the insurance company failed to elicit anything contra to the same during the cross examination of PW.1, according to this Court, the said amount of Rs.3,500/- towards monthly income shall be considered.

7. According to the appellant, he has sustained grievous injuries in the accident and in proof of the same he has filed Ex.A.3-injury certificate, Ex.A.4-discharge card, Ex.A.5-certificate, Ex.A.7-disability certificate and also examined the Orthopaedic Surgeon as PW.2. As per the above documents and deposition of PW.2, the appellant underwent surgery 6 holes D.H.S (L) left femur plate was fixed with screw after 90 MM leg screw fixation and for removal of plates. As per Ex.A.7-disability certificate and also as per deposition of PW.2, doctor assessed the disability as 40%. But the Tribunal without considering the deposition of PW.2 and Ex.A.7-disability certificate reduced the disability to 30% from 40% only on

the ground that 40% appears to be excessive. The said finding is contrary to the deposition of PW.2 and Ex.A.7-disability certificate. The Tribunal instead of relying upon the deposition of expert doctor i.e. PW.2 Orthopaedic Surgeon and Ex.A.7-disability certificate, reduced the disability to 30%. Therefore, according to this Court 40% should be considered as disability.

8. As stated supra, the age of the appellant was 42 years on the date of accident, the Tribunal applied multiplier '15' instead of '14' as per the decision of the Apex Court in **Sarala Verma and others v Delhi Transport Corporation and another**[1]**.** Thus, the appellant is entitled for Rs.2,35,200/- (Rs.3,500/- x 12 x 14 x 40%) towards disability.

9. Learned counsel for the appellant/claimant contended that as per decision of the Apex Court in **National Insurance Company Limited v Pranay Sethi**[2]**,** the appellant is entitled 25% for the future prospects. As discussed supra, admittedly, the appellant sustained grievous injuries and disability is 40% and the same is permanent and partial as per evidence of PW.2. It is relevant to note that the Apex Court in **Pranay Sethi**'s case referred supra, considered the future prospects in case of death. The present case is of grievous injuries. Hence, the appellant is not entitled for the future prospects.

10. The Tribunal granted only Rs.2,000/- towards loss of earnings and Rs.2,000/- towards paid and suffering. According to

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[1] 2009 ACJ 1298
[2] 2017(6) 170 (SC)

this Court, the said amounts are meagre and not reasonable and without any reasons. As stated supra, the appellant sustained grievous injuries and taken bed rest for a considerable time of four months and left femur plate was fixed. By considering the same, PW.2-doctor gave Ex.A.7-disability certificate mentioning 40% disability, which is permanent and partial. Hence, the appellant is entitled for Rs.30,000/- towards pain and suffering. The appellant is also entitled for Rs.14,000/- (Rs.3,500/- x 4) towards loss of monthly earnings, Rs.5,000/- towards transport charges, Rs.20,000/- towards extra-nourishment and Rs.1,000/- towards damage to clothes. Thus in all, the appellant is entitled for compensation as specifically mentioned below, which is just and reasonable with interest @ 7.5% per annum on the enhanced compensation from the date of petition till the date of realisation.

1) 40% disability	Rs. 2,35,200/-
2) loss of earnings	Rs. 14,000/-
3) Extra-nourishment	Rs. 20,000/-
4) Pain and suffering	Rs. 30,000/-
5) Transportation charges	Rs. 5,000/-
6) Damages to clothes	Rs. 1,000/-
	Rs.3,05,200/-

11. In the result, MACMA is allowed, modifying the award and decree dated 10.09.2004 in O.P.No.2754 of 2001 passed by the X Additional Chief Judge, (FTC) City Civil Court, Hyderabad enhancing compensation from Rs.91,200/- to Rs.3,05,200/- with interest @ 7.5% per annum on the enhanced compensation from the date of petition till the date of realisation. The respondents are jointly and severally liable to pay the compensation. The insurance

company is directed to deposit or pay the compensation amount along with interest within one month from the date of receipt of copy of this judgment, after deducting the amount, if any, deposited earlier. Though the claimant claimed an amount of Rs.2,00,000/-, in view of the above, the claimant is entitled for Rs.3,05,200/-, which is more than the claim, this Court is having power to grant just and reasonable compensation to which the claimant is entitled as held by the Apex Court in **B.Ramla v National Insurance Company Limited**[3] and **Adam Indur Muttemma v Rathod Reddia**[4]**.** However, the claimant is directed to pay deficit Court Fee within a period of one month from the date of receipt of a copy of this judgment and if the deficit court fee not paid as per Rule 475 of the M.V. Rules before the Tribunal, the claimant cannot be permitted to execute for the enhanced amount. The appellant is entitled to withdraw the compensation amount. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stands closed.

K.LAKSHMAN,J

Date 03.02.2020
kvrm

[3] (2019)2 SCC 192
[4] 2015 ACJ 2414