

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.186 OF 2017

JUDGMENT:

This appeal is filed by the appellant-claimant aggrieved by the order dated 29.01.2016 passed in M.V.O.P.No.688 of 2012 by the Court of XI Additional Chief Judge, City Civil Court, Hyderabad (for short, the Tribunal).

2. The brief facts of the case are that on 12.03.2011, while the appellant was proceeding on his scooter bearing No.AP24F 2139, along with his friend, from Naginenipally towards Bhongiri, and when they reached near Anataram bus stage at about 3.30 pm., one tipper lorry bearing No.AP28Y 9364 came from their behind at high speed in a rash and negligent manner and dashed the scooter. In the said accident, the appellant sustained fracture injury to both bones of right leg, blunt injury over left thigh and injury to right hand and right foot. He filed aforesaid MVOP against respondents Nos.1 to 2, owner and insurer of aforesaid lorry, claiming compensation of Rs.1,00,000/- for the injuries sustained by him.

3. Before the Tribunal, respondent No.1 remained *ex parte*. Respondent No.2 filed counter denying the averments of the claim petition and contended that the amount claimed is excessive and prayed to dismiss the claim petition.

4. After considering the oral and documentary evidence on record, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the

lorry and awarded total compensation of Rs.93,000/- under various heads with interest @ 7.5% per annum from the date of petition till the date of realization. Dissatisfied with the quantum of compensation, the appellant filed the present appeal, seeking enhancement of the same.

5. Smt.B.Roja Ramani, learned counsel for the appellant, submits that in the accident, the appellant sustained three grievous injuries i.e., (i) fracture injury to both bones of right leg, (ii) blunt injury over left thigh and (iii) injury to right hand and right foot, due to which, he suffered 10% disability. To prove the same, the appellant examined P.W.2, the doctor who treated him, who deposed that due to the said injuries, the appellant suffered disability at 10% and also admitted that he issued Ex.A.7-disability certificate to that effect. She further submits that when the disability is proved, the Tribunal ought to have granted the compensation by taking into consideration the income of the appellant and the percentage of disability along with future prospects, but the Tribunal, having accepted the disability, granted a lump sum amount of Rs.25,000/-, which is meager. She further submits that though the claim petition was filed under Section 163-A of the Motor Vehicles Act, 1988 (for short, the Act), there is no mandate not to add future prospects to the income of the deceased. She further submits that due to the injuries, the appellant was bedridden and could not attend to his work for two months and hence, the Tribunal ought to have granted loss of

earnings for such period by taking into consideration of his income at Rs.18,000/- per month. In support of her contentions, she relied on a judgment of the High Court of Chhattisgarh at Bilaspur in **B.M., Choramandalam MS General Ins. Co. Ltd. V. Sadhuram Yadav**¹ and also a judgment of the Apex Court in **V.Mekala V. M.Malathi**². Basing on the above submissions, the learned counsel seeks to enhance the compensation.

6. Sri Chatla Madhu, learned Standing Counsel for respondent No.2, submits that the Tribunal passed a well reasoned order by taking into consideration all the aspects and seeks to dismiss the appeal.

7. Insofar as the contention of the learned counsel for the appellant with regard to non-consideration of partial permanent functional disability is concerned, though P.W.2 deposed that due to the said injuries, the appellant suffered disability at 10% and though admitted about the issuance of Ex.A.7-disability certificate, in the cross-examination, he admitted that he has not operated the appellant and there is no record showing for follow-up treatment. However, P.W.2 did not state as to whether such disability is the functional disability and whether due to the said disability, the appellant cannot do his work of cable operator.

8. In **Raj Kumar**'s case (supra), the Apex Court summarized the principles with regard to assessment of the effect of permanent

¹ 2019 ACJ 1788

² 2014 ACJ 1441

disability on the actual earning capacity. As per the proposition of law laid down therein, if a doctor gives evidence about the percentage of permanent disability, the Tribunal has to seek clarification as to whether such percentage of disability is the functional disability with reference to the whole body or whether it is only with reference to a limb. If the percentage of permanent disability is stated with reference to a limb, the Tribunal will have to seek the doctor's opinion as to whether it is possible to deduce the corresponding functional permanent disability with reference to the whole body and, if so, the percentage. In the present case, P.W.2 did not state as to whether such percentage of disability is the functional and whether due to the disability, the appellant cannot do his work of cable operator. Therefore, non-consideration of the functional permanent disability of the appellant by the Tribunal as per formula, in the absence of any evidence to that effect, cannot be found fault. However, taking into consideration of the evidence of P.W.2 and Ex.A.7, the Tribunal granted lump sum amount of Rs.25,000/-, which in the opinion of this Court, needs no interference. Coming to the judgments relied on by the learned counsel for the appellant, as the appellant failed to prove his functional permanent disability, the said judgments cannot help the appellant and the contention of the learned counsel for the appellant in this regard is negated.

9. Coming to the contention of the learned counsel for the appellant that the Tribunal ought to have granted loss of earnings

for a period of 2 months @ Rs.18,000/- per month is concerned, P.W.2, in his cross-examination, admitted that he has not operated the appellant and there is no record showing for follow-up treatment. When there is evidence of the doctor, who treated the appellant, to the effect that he did not operate the appellant, the claim of the appellant that he was bedridden for two months for the injuries cannot be considered and the contention of the learned counsel in this regard is rejected. In the circumstances, the Tribunal did not grant any amount under that head, which in the opinion of this Court, is just and proper and needs no interference.

10. In the facts and circumstances of the case, this Court is of the opinion that the Tribunal had dealt with all the issues in detail and passed a well reasoned order and there are no grounds to interfere with the same. Hence, the appeal is liable to be dismissed.

11. In the result, the Motor Accident Civil Miscellaneous Appeal is dismissed. Miscellaneous petitions pending, if any, shall stand closed. No costs.

Date: 07.01.2020
TJMR

T.AMARNATH GOUD, J