

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.15 OF 2017

JUDGMENT:

This appeal is filed by the appellant-claimant aggrieved by the Award dated 15.09.2016 passed in M.V.O.P.No.472 of 2013 by the Motor Vehicle Accidents Claims Tribunal-cum-XXV Additional Chief Judge, City Civil Court at Hyderabad (for short, the Tribunal).

2. The brief facts of the case are that on 04.02.2012 at about 9.00 pm., while the appellant was proceeding on his TVS Champ bike bearing No.AP13K 0367 from Pedda Shapur Thanda towards Palamakula Petrol Pump, and when he reached near Madanapally Patha Thanda, a DCM Van bearing No.AP22X 1890 came in a rash and negligent manner in opposite direction and dashed the TVS Champ bike. In the said accident, the appellant sustained fracture injuries to his head, left hand and right hand and blunt injury to left side eye, cut of tongue and other injuries all over the body. He filed aforesaid MVOP against respondents Nos.1 to 2, owner and insurer of aforesaid DCM Van, claiming compensation of Rs.8,00,000/- 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 DCM Van and awarded total compensation of Rs.1,48,600/- under various heads with interest @ 8% per annum from the date of petition till the date of decree and thereafter, at 6% per annum till realization. Dissatisfied with the quantum of compensation, the appellant filed the present appeal, seeking enhancement of the same.

5. Sri P.Ramakrishna Reddy, learned counsel for the appellant, submits that in the accident, the appellant sustained fracture injuries to his head, left hand and right hand and blunt injury to left side eye, cut of tongue and other injuries all over the body, for which, he became disabled permanently, affected with paralysis, shortening of right leg by 4 inches, he is completely bedridden and unable to move from the bed, but the Tribunal granted meager compensation. He further submits that though the appellant filed Ex.A.21, disability certificate, showing that the appellant suffered 55% disability, the Tribunal did not take the same into consideration and did not award any amount under that head. He further submits that though it is brought to the notice of the Tribunal that the appellant was studying B.Com second year and also working as part time driver and used to earn Rs.10,000/- per month, the Tribunal assessed the income of the appellant at Rs.4,000/- per month, which is meager. In support of his contention, he relied on a judgment of the Apex Court in

V.Mekala V. M.Malathi¹. Basing on the above submissions, the learned counsel seeks to enhance the compensation.

6. Sri K.S.N. Murthy, 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. As per Ex.A.3-medico legal record issued by Osmania General Hospital, shows that the appellant sustained three injuries i.e., (i) dressed wound on left hand, (ii) dressed wound on forehead and orbit and (iii) skin abrasion on the back. Ex.A.6, discharge summary, shows that the appellant was admitted as inpatient in the Osmania General Hospital on 05.02.2012, surgery was conducted to him on the same day for left frontal depressed fracture and he was discharged on 13.02.2012. It also shows that the appellant took treatment under Arogyasree Scheme. The evidence of P.W.3-Assistant Professor in Neuro Surgery in Osmania General Hospital, and P.W.4-doctor in Multi-speciality Hospital, Dilsukhnagar, shows that the appellant sustained aforesaid three injuries, out of which, one is the grievous injury and two are the simple injuries. Basing on the said evidence, the Tribunal granted a sum of Rs.20,000/- towards one grievous injury, Rs.10,000/- (Rs.5,000/- each) towards two simple injuries and Rs.20,000/- towards pain and suffering, which are just and reasonable and need no interference.

¹ 2014 ACJ 1441

8. Insofar as the contention of the learned counsel for the appellant that the Tribunal ought to have considered Ex.A.21-disability certificate, is concerned, though the accident had occurred on 04.02.2012, the appellant obtained Ex.A.21 from P.W.5 on 08.12.2014 i.e., after a period of two years ten months from the date of accident. Apart from the same, the appellant did not explain as to why he did not obtain disability certificate from the Medical Board of Osmania General Hospital, where he took treatment as inpatient from 05.02.2012 to 13.02.2012. Pointing out the same, the Tribunal did not believe the evidence of P.W.5 and consider Ex.A.21 and held that the petitioner is not entitled to any compensation under the head of permanent disability, which in opinion of this Court, is just and proper and needs no interference.

9. Now coming to the correctness of fixing the notional income of the deceased at Rs.4,000/- per month. Though the appellant claimed that he was a part-time driver and used to earn Rs.10,000/- per month, he did not file either oral or documentary evidence to prove the same. In the circumstances, the Tribunal fixed the income of the appellant at Rs.4,000/- per month and accordingly granted a sum of Rs.24,000/- towards loss of earnings for six months. In **V.Mekala's** case (supra), the Apex Court, by taking into consideration the fact that the injured therein secured first rank in the X standard, and also keeping in mind her past results, took Rs.10,000/- towards monthly notional income. But, that is not the case here, as no evidence was led before the

Tribunal in that regard. Hence, the said judgment cannot help the appellant. Therefore, the finding of the Tribunal in that regard 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: 03.01.2020
TJMR

T.AMARNATH GOUD, J

