

HON'BLE SRI JUSTICE K. LAKSHMAN

M.A.C.M.A. No.3118 of 2014

JUDGMENT :

Feeling aggrieved by the order and decree dt.28.04.2014 in O.P.No.449 of 2005 passed by the I Additional Metropolitan Sessions Judge-cum-XV Additional Chief Judge, Hyderabad ("Tribunal"), the appellant/claimant has preferred the present appeal.

By the aforesaid order, the Tribunal has awarded a sum of Rs.79,450/- towards compensation with interest @ 7.5% per annum from the date of the petition till 30.09.2009 and also from 10.12.2012 till the date of realization, as against the claim of Rs.5,00,000/- made by the appellant/claimant.

On an analysis of the entire evidence on record, the Tribunal gave a specific finding that the accident took place due to the rash and negligent driving by the driver of the offending vehicle. Admittedly, respondent No.2 – Insurance Company did not prefer any appeal challenging the said finding of the Tribunal, therefore, the said finding attained finality.

Now, the only question that falls for consideration by this Court is with regard to quantum of compensation being awarded.

It is the specific contention of the appellant/claimant that he has sustained grievous injuries in the accident and in proof of the same, the appellant has filed Ex.A.3 – Copy of Medical Certificate; Ex.A.4 – Discharge Summary; Ex.A.5 – C.T. Scan Report, Ex.A.11 – X-Ray Films. He has also examined himself as PW.1 and also examined the Doctor, who treated him, as PW.2. It is relevant to note that the Doctor, who issued Ex.A.7 – Disability Certificate, mentioned the disability sustained by the appellant as 20%. It is also the specific contention of the appellant that he has sustained fracture to his right thigh and pelvic region and other injuries. It is also the specific contention of the appellant that he used to work as a Turner in M/s. Hyderabad Industries and earning Rs.8,420/- per month and accordingly, under various heads, the appellant claimed a sum of Rs.5,00,000/- towards compensation.

According to the learned counsel for the appellant/claimant, the Tribunal without considering the disability sustained by the appellant at 70% as per Ex.A.7 – Disability Certificate, and the deposition of PW.2 – Doctor, awarded an amount of Rs.79,450/- towards compensation, which is unjust and unreasonable.

Learned counsel for the appellant would contend that the Tribunal did not award compensation on various other heads, such as transportation, damages to clothes, extra-

nourishment etc. Learned counsel for the appellant would, therefore, seek to award a total sum of Rs.5,00,000/- towards compensation as claimed by the appellant.

On the other hand, the learned Standing Counsel for respondent No.2 – United India Insurance Company Limited contends that PW.2 – Doctor, who issued Ex.A.7 – Disability Certificate, is not competent to issue the same and he has issued the said Certificate without conducting proper medical examination of the appellant. He would further contend that the appellant/claimant did not file any document to show that he was working in M/s. Hyderabad Industries as a Turner and earning a salary of Rs.8,420/- per month as on the date of accident. However, in the absence of the same, the Tribunal has awarded a sum Rs.79,450/- towards compensation.

A perusal of the entire evidence, both oral and documentary, shows that the appellant did not file any document to show that he was working as a Turner in M/s. Hyderabad Industries and he has not examined any person, including a co-employee or the Manager of the said Company to prove the same. The appellant also has not filed any document much less his Salary Certificate to prove about his avocation and earnings.

With regard to the injuries sustained by him, the appellant has filed Ex.A.3 – Medical Certificate, as per which

he sustained fracture to his right thigh, pelvic region and other injuries.

Admittedly, P.W.2 – Doctor, who treated the appellant, issued Ex.A.7 – Disability Certificate mentioning the disability sustained by the appellant as 20%. However, the Tribunal has considered only 10% disability. It is settled principle of law that the Tribunal has power to disagree with the opinion of the Medical Expert, but the said power must be used reasonably and with circumspection. In the instant case, the Tribunal disagreed with the opinion of the Doctor (PW.2) and Ex.A.7 – Disability Certificate and considered the disability sustained by the appellant as 10% only.

It is relevant to note here that the Tribunal gave a specific finding that PW.2 - Doctor examined the appellant after 10 years. It is also relevant to note that initially the O.P.No.449 of 2005 was dismissed for default on 30.09.2009 and subsequently on the application filed by the appellant along with delay condonation application, the same was restored to file vide order dt.10.12.2012 in I.A.No.640 of 2012.

While referring the same, learned Standing Counsel for respondent No.2 – Insurance Company would contend that there are serious lapses on the part of the appellant and, therefore, the Tribunal has rightly awarded a sum of Rs.79,450/- towards compensation along with interest @

7.5% per annum from the date of petition till 30.09.2009 and also from 10.12.2012 till the date of realization.

Though the appellant claimed that he lost employment in M/s. Hyderabad Industries due to the injuries sustained by him in the said accident, he has not produced any evidence, either oral or documentary, in support of his contention. In the absence of any such proof, the said contention of the appellant cannot be countenanced. Further, with regard to the monthly earning capacity of the appellant, though the appellant claimed that he was working as a Turner in M/s. Hyderabad Industries and earning Rs.8,420/- per month as on the date of accident, he has not filed any document in proof of the same, including the Salary Certificate with regard to his income, and in the absence of the same, it cannot be considered that the appellant is drawing a salary of Rs.8,420/- per month.

However, in support of his contention, learned counsel for the appellant placed reliance on a judgment of the Apex Court in RAMACHANDRAPPA Vs. ROYAL SUNDARAM ALLIANCE INSURANCE CO. LTD.¹, wherein the Apex Court had considered the earning capacity of a labour as Rs.4,500/- per month. In the said case, the accident took place in the year 2004, and in the present case also the accident took place on 19.12.2004. Therefore, in view of the principle laid

¹ (2011) 13 SCC 236

down in RAMACHANDRAPPA's case (supra), the earning capacity of the appellant can be considered as Rs.4,500/- per month.

As discussed supra, the Tribunal has rightly considered the disability sustained by the appellant at 10%. Admittedly, respondent No.2 – Insurance Company did not prefer any appeal challenging the said finding of the Tribunal. In view of the same, the appellant is entitled for a sum of Rs.4,500/- per month and per annum, it comes to (Rs.4,500/- x 12) Rs.54,000/- per annum + Rs.27,000/- (future prospects) = Rs.81,000/-. Then the loss of disability comes to Rs.81,000/- x 12 (multiplier) x 10/100 (percentage of disability) = Rs.97,200/-. The appellant is also entitled for an amount of Rs.25,000/- towards extra nourishment in view of the treatment undertaken for injuries sustained by him. The appellant is also entitled for Rs.5,000/- towards transportation charges and Rs.1,000/- towards damages to the clothes. Admittedly, the appellant received fracture injuries and could not attend to his duties for a period of two months, therefore, he is entitled for Rs.9,000/- (Rs.4,500/- x 2 = Rs.9,000/-) towards loss of temporary earnings and Rs.4,000/- (Rs.2,000/- x 2) towards attendant charges, apart other benefits already awarded by the Tribunal. Thus, in all, the appellant is entitled for the following amounts:

<u>Name of Heading :</u>	<u>Amount Rs.</u>
Loss of disability	: 97,200-00
Extra-nourishment	: 25,000-00
Transportation charges	: 5,000-00
Damages to clothes	: 1,000-00
Loss of temporary earnings	: 9,000-00
Loss of attendant charges	: 4,000-00
Pain and suffering	: 25,000-00
Medical Bills	: 1,250-00

TOTAL :	: 1,67,450-00

Accordingly, the Civil Miscellaneous Appeal is allowed in part awarding compensation of Rs.1,67,450/- (Rupees one lakh sixty seven thousand four hundred and fifty only) towards compensation for the injuries sustained by him in the accident, while maintaining interest @ 7.5% per annum as awarded by the Tribunal from the date of the petition till 30.09.2009 and also from 10.12.2012 till the date of realization. No order as to costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

JUSTICE K. LAKSHMAN

13.03.2020.
Msr

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(Msr)