HONOURABLE JUSTICE M.G. PRIYADARSINI

M.A.C.M.A. No.265 of 2017

JUDGMENT:

Being not satisfied with the quantum of compensation awarded in the order and decree, dated 28.11.2008, passed in O.P.No. 151 of 2006 on the file of the Motor Accidents Claims Tribunal (District Judge) at Karimnagar (for short "the Tribunal") and in exonerating the insurance company from the liability of payment of compensation, the appellant/claimant preferred the present appeal seeking enhancement of the compensation.

2. The facts, in issue, are as under:

The appellant filed a petition under Section 166 of the Motor Vehicles Act claiming compensation of Rs.8,00,000/- for the injuries sustained by him in a road accident that occurred on 04.04.2004. According to the appellant, on 04.04.2004, while he was traveling in the offending vehicle i.e., Auto bearing No. AP 1U 6846, owned by respondent No. 2, insured with respondent No. 3 from Yapal Mandamarri to Bellampalli, the driver, respondent No. 1 drove the vehicle in a rash and negligent manner at high speed and dashed the auto to a pedestrian and as a result, the auto turned turtle. The appellant sustained multiple fracture injuries and was treated at various hospitals. According to the appellant, he had spent Rs.2,30,000/- towards treatment and medicines and has suffered permanent disability. Therefore, he laid the claim against the respondents, seeking compensation.

3. Before the tribunal, while the respondent Nos. 1 & 2 remained ex parte, the respondent No. 3, insurance company, contested the claim. After considering the claim and the counter filed by respondent No.3, and on evaluation of the evidence, both oral and documentary, the learned Tribunal has partly allowed the O.P. awarding compensation of Rs.2,24,000/- with interest at 7.5% per annum to be payable by the driver & owner of the offending vehicle i.e., respondent Nos. 1 & 2 while dismissing the claim against the respondent No. 3, insurance company. Challenging the quantum of compensation awarded and in dismissing the claim petition as against the insurance company, the present appeal is filed by the appellant/claimant.

4. Heard learned counsel for the appellant and learned Standing Counsel for respondent No.3.

5. Learned counsel for the appellant firstly submitted that the tribunal ought not to have exonerated the insurance company from the liability of payment of compensation even though the respondent No. 3, insurance company has failed to prove any violation of policy conditions by examining the

concerned persons from the RTA. As regard the quantum of compensation awarded by the Tribunal, the learned counsel submits that the compensation awarded by the tribunal is on lower side and seeks enhancement of the same. He further submits that the evidence of PW.3 & 4, doctors, and Ex.A4, Disability Certificate, amply established that the appellant had sustained 40% permanent disability, but the Tribunal without considering the same, has erroneously taken the disability at 20%. It is also submitted that as per the principles laid down by the Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi and others***[1]**,** the appellant is also entitled to the future prospects at 40%. Therefore, it is argued that the income of the appellant may be taken into consideration reasonably and prayed to enhance the same by considering the disability at 40%.

6. Per contra, the learned Standing Counsel for the Insurance Company submits that the quantum of compensation awarded by the Tribunal is based on evidence and the same needs no interference. It is contended that inasmuch as in the charge sheet it is mentioned as the auto driver, respondent No.1 was not possessing valid driving licence and as he was charge sheeted for the offence under Section 181 of the Motor Vehicles

[1] 2017 ACJ 2700

Act, the tribunal has rightly held that there was violation of terms and conditions of policy by the owner of the vehicle and therefore, rightly dismissed the claim as against the respondent No. 3.

7. The finding of the Tribunal with regard to the manner in which the accident took place has become final as the same is not challenged either by the owner or insurer of the vehicle.

8. The short question that arises for consideration is "*whether the compensation awarded by the Tribunal is just and reasonable and whether the insurance company was rightly exonerated from the liability of payment of compensation*"?

9. As seen from medical evidence, P.W.3, the doctor, who treated the claimant, deposed that the claimant sustained (i) central dislocation right hip with fracture actabulum; and (ii) fracture superior ramus left pubis. It is his further evidence that the claimant has taken subsequent follow up treatment and that he had underwent surgery on 29.10.2004. His evidence further discloses that injury of urethra was caused by fracture of pubic bone and that erectile distinction may lead to impotency and dissatisfaction in sexual life of the claimant. P.W.4, the Orthopedic surgeon in KIMS Hospital, deposed that there was 4 inches shortening of right lower limb; that the claimant has to undergo for cementless hip replacement which

would cost Rs.2,00,000/-; that the claimant cannot sit and cannot run; that the claimant got cross limp which would cause back pain in the future and that the claimant has disability on his right leg. Apart from that, the claimant has produced Ex.A.4, Disability Certificate, issued by the Medical Board, Adilabad. Therefore, considering the said evidence, this Court is of the view that the tribunal ought not to have restricted the disability to 20%, more so, when the competent Medical Board had certified the disability at 40%. Therefore, considering the evidence of P.Ws.3, 4 and Ex.A.4, this Court fixes the disability suffered by the claimant at 40%.

10. Insofar as the income of the claimant is concerned, he was B.Sc. I year student by the time of the accident and aged about 21 years. Considering the academic qualification, this Court fixes the monthly income of the claimant at Rs.4,500/-.

11. Insofar as the future prospects are concerned, recently, the Apex Court in ***Sidram v. The Divisional Manager, United India Insurance Company Limited*** (CIVIL APPEAL No. 8510 OF 2022, dated 16.11.2022) held as under:-

"31. It is now a well settled position of law that even in cases of permanent disablement incurred as a result of a motor-accident, the claimant can seek, apart from compensation for future loss of income, amounts for future prospects as well. We have come across many orders of different tribunals and unfortunately affirmed by different High Courts, taking the view that the

claimant is not entitled to compensation for future prospects in accident cases involving serious injuries resulting in permanent disablement. That is not a correct position of law. There is no justification to exclude the possibility of compensation for future prospects in accident cases involving serious injuries resulting in permanent disablement. Such a narrow reading is illogical because it denies altogether the possibility of the living victim progressing further in life in accident cases – and admits such possibility of future prospects, in case of the victim's death."

12. In view of above said decision, the appellant is entitled to future prospects. As the age of the appellant is 21 years at the time of the accident, he is entitled the future prospects at 40%.

13. Therefore, by adding 40% future prospects, the future monthly income of the appellant comes to Rs.6,300/- (Rs.4,500/- + Rs.1,800/-). In view of the judgment of ***Sarla Verma Vs. Delhi Transport Corporation***[2], the suitable multiplier to be adopted for calculating the loss of earnings would be '18'. Therefore, the loss of earnings on account of the disability is determined at Rs.6,300/- x 12 x 18 x 40/100 = Rs.5,44,320/-.

14. Further, as seen from the record, considering Exs.A.5 to A.10 and A.13, even though the concerned Billing Manager was not examined, the tribunal has awarded Rs.1,02,000/- towards medicines & treatment, which is just and reasonable. But, considering the nature of injuries and length of treatment, the amount of Rs.38,000/- awarded by the tribunal towards pain

[2] 2009 ACJ 1298

and suffering is enhanced to Rs.50,000/-. It is to be noted that the tribunal did not award any amount under the head of injuries. Hence, this Court awards a sum of Rs.25,000/- towards injuries. The amount of Rs.30,000/- awarded by the tribunal towards transportation and attendant charges is not interfered with. However, under the head of extra nourishment, this court awards a sum of Rs.10,000/-. Considering Ex.A.11 and the evidence of P.W.4, this Court is inclined to award a sum of Rs.1,00,000/- for replacement of hip and follow up treatment. The medical evidence discloses that the claimant has suffered injury of urethra, which was caused by fracture of pubic bone and that erectile distinction may lead to impotency and dissatisfaction in sexual life of the claimant. Therefore, considering this evidence, as the injuries suffered by the claimant may affects his marital life, this Court is inclined to award a sum of Rs.1,00,000/- towards loss of amenities to life. Thus, in all, the claimant is awarded the compensation of Rs.9,61,320/-.

15. At this stage, the learned Counsel for the Insurance company submits that the appellant claimed only a sum of Rs.8,00,000/- as compensation and the quantum of compensation which is now awarded would go beyond the claim made which is impermissible under law.

16. In view of the Judgments of the Apex Court in ***Laxman @ Laxman Mourya Vs. Divisional Manager, Oriental Insurance Company Limited and another***[3] and ***Nagappa Vs. Gurudayal Singh***[4] the appellant is entitled to get just compensation even if it is more than the amount what was claimed by the appellant.

17. So far as the liability aspect is concerned, it is contended by the learned Standing Counsel for the Insurance Company that the driver of the offending vehicle was not having valid driving license and the police also filed charge sheet against the driver of the offending vehicle for the offence under Section 181 of the Motor Vehicles Act. As per Section 149(2) of the Motor Vehicles Act, 1988, heavy burden lies upon the insurer to prove that the driver of the vehicle had no valid driving license at the time of the accident. The evidence of RW-1 does not establish that the driver of the offending vehicle was having a valid and effective driving license as on the date of the accident or not. But it only discloses the fact that the driver has been prosecuted for not producing the driving license. In that light, the evidence of RW-1 is not of much assistance to the insurer in order to establish the fact that the driver of the offending vehicle did not possess a valid and effective driving license at the time

[3] (2011) 10 SCC 756
[4] 2003 ACJ 12 (SC)

of the alleged accident. Furthermore, no notices were issued either to the owner or driver of the offending vehicles requiring them to produce the driving licence. Under such circumstances, the evidence of RW-1 will not help the insurer. The tribunal went on under wrong assumption holding that the claimant did not take any steps to summon either owner or the driver of the auto to produce the driving licence of the auto driver. In fact, it is the primary duty of the insurance company to take such steps in order to establish that there was breach of terms of the policy. As per the principles laid down by the Apex Court in **Rukmani And Others V. New India Assurance Co. And Others**[5], when the insurer had failed to prove the defence raised in the statement of objections, such a plea cannot be accepted. When the police officer or the records are not summoned from the transport authority to establish the fact that the driver of the offending vehicle was not having a valid and effective driving license, then, under such circumstances, it has to be held that the insurer has failed to discharge its burden. Under these circumstances, the findings of the tribunal in dismissing the claim as against the respondent No. 3, Insurance is not sustainable under law and the same is set aside holding that the insurance company is also jointly and

[5] (1998) 9 SCC 160

severally liable to pay the compensation along with the respondent Nos. 1 & 2.

18. Accordingly, the appeal is allowed by enhancing the compensation from Rs. 2,24,000/- to Rs. 9,61,320/-. The enhanced amount shall carry interest at 7.5% p.a. from the date of order passed by the Tribunal till the date of realization to be payable by respondent Nos. 1 to 3 jointly and severally. The respondent No. 3 is directed to deposit the said amount within two months from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the entire compensation amount. However, the appellant is directed to pay Deficit Court Fee on the enhanced amount. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE M.G. PRIYADARSINI

15.12.2022
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HONOURABLE JUSTICE M.G. PRIYADARSINI

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DATE: 15-12-2022