

**HON'BLE SMT. JUSTICE M.G.PRIYADARSINI**

**M.A.C.M.A. No.1446 of 2014**

**JUDGMENT:**

Not being satisfied with the quantum of compensation awarded by the XVII Additional Chief Judge-cum-III Additional Metropolitan Sessions Judge, Hyderabad in O.P. No. 1747 of 2005 dated 18.09.2007, the present appeal is filed by the petitioner/claimant.

2. For the sake of convenience, the parties have been referred to as arrayed before the Tribunal.

3. According to the petitioner, on 29.05.2005 at about 07:00 A.M., he loaded chicken in his auto bearing No. AP 12 UT 5092 from Laxmareddy Poultry Farm at Kandukur and when he reached near by Tukuguda, one DCM lorry bearing No. AP 09 V 4866 came from Hyderabad in rash and negligent manner with high speed and by overtaking Hero Honda dashed against his auto trolley, as a result, he sustained fracture on his right hand and injuries all over the body. Thus the petitioner is claiming compensation against the respondent Nos.1 and 2, who are owner and insurer of the DCM lorry jointly and severally.

4. Respondent No. 1 was set exparte.
5. Respondent No.2 filed counter disputing the manner in which the accident occurred, age, avocation, income and health condition of the petitioner/claimant. It is further contended that the respondents are not liable to pay compensation.
6. In view of the above pleadings, the Tribunal raised the following issues:
  - 1) *Whether the petitioner sustained injuries in the accident that occurred on 29-05-2005 due to rash and negligent driving of the DCM bearing No. AP-09-V-4866?*
  - 2) *Whether the petitioner is entitled to any compensation and if so, to what amount and from whom?*
  - 3) *To what relief?*
7. In order to prove the issues, on behalf of the petitioners, PWs.1 and 2 were examined and got marked Exs.A-1 to A-9. On behalf of respondent No.2, RW.1 was examined and Ex.B1 to B2 is marked.

8. Considering the oral and documentary evidence available on record, the Tribunal has awarded an amount of Rs.32,700/- towards compensation to the appellant-claimant along with proportionate costs and interest @ 7.5% per annum from the date of petition till the date of realization against the respondent Nos.1 and 2 jointly and severally.

9. Heard the learned counsel for the appellant-claimant and the learned Standing Counsel for the respondent No.2-Insurance Company. Perused the material available on record.

10. The learned counsel for the appellant-claimant has submitted that although the claimant, by way of evidence of P.W.1 and 2 coupled with Exs.A1 to A9, established the fact that the accident occurred due to the rash and negligent driving of the driver of the DCM lorry and the petitioner has sustained permanent disability due to the injuries caused in the accident, the Tribunal awarded very meager amount under various heads.

11. The learned Standing Counsel appearing on behalf of second respondent-Insurance Company sought to sustain the impugned award

of the Tribunal contending that considering the manner of accident and the nature of injuries sustained by the petitioner, the learned Tribunal has awarded reasonable compensation and the same needs no interference by this Court.

12. With regard to the manner of accident, after evaluating the evidence of PW-1 coupled with documentary evidence available on record, the Tribunal rightly held that accident occurred due to the rash and negligent driving of the driver of DCM lorry.

13. Coming to the quantum of compensation, according to the petitioner, his right hand was fractured apart from grievous injuries over his both knees and he is not able to do any work due to the injuries caused to him. In support of his contention, he examined the Doctor who treated him as PW-2. PW-2 deposed that he gave treatment to PW-1 and he was having wound infections and he took treatment as out-patient for about nine months and issued Ex.A7 disability certificate alleging that PW-1 sustained 20% partial and permanent disability. He is facing difficulty in lifting weights, stiffness of right wrist and painful wrist movements. Further Ex.A3 certified copy of Medical Legal case record issued by Osmania

General Hospital shows that PW-1 was admitted in Osmania General Hospital on 29.5.2005 and Ex.A4 discharge card shows that he was discharged on 7.10.2005. Therefore, it is clear that PW-1 had taken treatment in Osmania General Hospital as in-patient for more than four months. Ex.A6 is the bunch of medical bills for Rs.5,780/-.

14. Coming to the disability sustained by the petitioner, the evidence of PW.2 clearly established that he sustained 20% partial and permanent disability, which appears to be excessive. Therefore, considering the evidence of PW-2 and the nature of injury sustained by PW-1, the disability sustained by the petitioner is fixed at 10%. According to the petitioner, he was a driver and the accident occurred during the year 2005 and as there was no income proof, the income of the petitioner can be taken at Rs.4,000/- per month. Further, in light of the principles laid down by the Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi and others***<sup>1</sup>, the claimant is also entitled to the future prospects and since the petitioner was aged about 25 years at the time of accident, 40% of the income is added towards future prospects. Then it comes to Rs.5,600/- (4,000 + 1,600 = 5,600/-). As the claimant was aged about 25 years at the time of

---

<sup>1</sup> 2017 ACJ 2700

accident, the appropriate multiplier in light of the judgment of the Apex Court in *Sarla Verma v. Delhi Transport Corporation*<sup>2</sup> would be “18”. Thus, the future loss of income due to 10% disability comes to Rs. 5,600 x 12 x 18 x 10/100 = **Rs.1,20,960/-**, which the petitioner/claimant is entitled.

15. Further, it is clearly established that PW-1 had sustained one grievous injury and two simple injuries. Considering the nature of injuries sustained by the petitioner, the Tribunal awarded **Rs.5,700/-** towards medical expenses, which is just and reasonable. However, the amount of Rs.10,000/- awarded towards the injuries sustained by the petitioner is very less and as such, an amount of **Rs.20,000/-** for one grievous injury and **Rs.10,000/-** for another two simple injuries is awarded. Further an amount of Rs.15,000/- is awarded by the Tribunal towards pain and sufferance, which is very less and the same is enhanced to **Rs. 20,000/-**. The petitioner is also entitled for **Rs.15,000/-** towards extra nourishment, attendant and transport charges. In total, the claimant is entitled to **Rs.1,91,660/-**, which can be rounded off to **Rs.1,92,000/-**.

---

<sup>2</sup> 2009 ACJ 1298 (SC)

16. In the result, the M.A.C.M.A. is allowed by enhancing the compensation amount awarded by the Tribunal from Rs.32,700/- to **Rs.1,92,000/-**. The enhanced amount shall carry interest at 7.5% p.a. from the date of petition till the date of realization, payable by respondent Nos. 1 and 2 jointly and severally. The amount shall be deposited within a period of one month from the date of receipt of a copy of this order. The petitioner shall pay the deficit court fee and on such deposit of deficit court fee only, the claimant is at liberty to withdraw the same without furnishing any security. No costs.

Miscellaneous petitions, if any pending, shall stand closed.

---

**M.G.PRIYADARSINI,J**

28.12.2022

pgp