

HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A. No.664 of 2019

JUDGMENT:

Dissatisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal-cum-Chief Judge, City Civil Court, Hyderabad in M.V.O.P. No.896 of 2010, dated 23.12.2017, the present appeal is filed by the claimant seeking enhancement of compensation granted by the Tribunal.

2. Appellant is the petitioner in the main O.P. According to the petitioner, on 26.12.2009 while the petitioner was proceeding from Vikarabad to Koukuntla in his auto bearing No. AP.28.V.5878 and when he reached near Vikarabad bus depot bridge, suddenly one lorry bearing No.AP.16.TV.2450 came in rash and negligent manner with high speed and dashed his auto from back side, as a result, the auto turned turtle and the petitioner fell on the road and sustained grievous injuries all over the body. Thus, he is claiming compensation of Rs.5,00,000/- under various heads.

3. Respondent No.1 died and respondent Nos.3 and 4 remained ex parte. Respondent No.2 filed counter disputing the manner of accident, nature of injuries sustained by the petitioner, age, avocation and income of the claimant and further contended that

the claim is exorbitant and sought for dismissal of the claim petition.

4. Based on the above pleadings, the Tribunal framed the following issues:

- 1) Whether the pleaded accident had occurred resulting in injuries sustained by the petitioner Abdul Jameel, due to rash and negligent driving of lorry bearing No. AP.16.TV.2450 by its driver?
- 2) Whether the petitioner is entitled to any compensation, if so, at what quantum and what is the liability of the respondents?
- 3) To what relief?

5. In order to prove the issues, on behalf of the petitioners, the petitioner examined himself as PW-1 and also got examined PW.2 and got marked Exs.A1 to A6. On behalf of the respondent No.2- Insurance Company, no witnesses were examined, however, Ex.B1 got marked.

6. On considering the oral and documentary evidence available on record, the Tribunal has awarded an amount of Rs.1,15,000/- towards compensation along with interest at 6% per annum from the date of petition till the date of deposit to the appellant-claimant against the respondent Nos.2 to 4 jointly and severally.

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

8. The learned counsel for the appellant-claimant has submitted that although the claimant, by way of evidence of P.Ws.1 and 2 and Exs.A.1 to A.6, established the fact that the petitioner has sustained 65% permanent disability due to the injuries received by him in the accident, but the Tribunal has awarded very meager amount of Rs.1,15,000/- under various heads.

9. The learned Standing Counsel appearing on behalf of respondent No. 2 sought to sustain the impugned award of the Tribunal contending that considering the nature of injuries sustained by the petitioner and the treatment taken by him, the learned Tribunal has awarded reasonable compensation and the same needs no interference by this Court.

10. Admittedly, there is no dispute with regard to the manner of accident and the involvement of lorry bearing No.AP.16.TV.2450.

Now, the only dispute in the present appeal is with regard to the quantum of compensation.

11. As per the evidence available on record, the evidence of the claimant/PW-1 coupled with the documentary evidence shows that he was admitted in Osmania General Hospital on 26.12.2009 and discharged on 18.01.2010 and he sustained fracture of shaft femur M/3rd right. Further according to the evidence of PW-2, who is the Member of Medical Board, the petitioner was suffering with fracture shaft femur in right side with implant C2 and was examined by him clinically and radiologically, physically and issued the disability certificate assessing the disability as 65%, which is permanent in nature. PW-2 further stated in his evidence that the petitioner is facing difficulty in sitting, squatting and walking stiffness of right knees joint and that even after physiotherapy, the percentage of disability cannot be reduced. But the tribunal did not consider the disability sustained by the petitioner. However, considering the evidence of PWs.1 and 2 coupled with the documentary evidence, the disability sustained by PW-1 can be taken at 65%.

12. According to the petitioner, he was auto driver and was earning Rs.10,000/- per month. However, as there was no income proof, the income of petitioner can be taken at Rs.4,500/- per month while calculating the compensation towards the disability. As per the records, the claimant was aged about 46 years at the time of accident. Then the appropriate multiplier in light of the judgment of the Apex Court in **Sarla Verma v. Delhi Transport Corporation**¹ would be “13”. Thus, the future loss of income due to 65% disability comes to $\text{Rs.}4,500 \times 12 \times 13 \times 65/100 = \text{Rs.}4,56,300/-$, which the petitioner/claimant is entitled. The petitioner is also entitled for **Rs.25,000/-** towards pain and sufferance and **Rs.20,000/-** towards extra nourishment, attendant charges and transport charges. In total, the claimant is entitled to Rs.5,01,300/-. However, since the claim is for Rs.5,00,000/- the award amount is restricted to **Rs.5,00,000/-**.

13. In the result, the M.A.C.M.A. is allowed by enhancing the compensation amount awarded by the Tribunal from Rs.1,15,000/- to **Rs.5,00,000/-**. The enhanced amount shall carry interest at 7.5% p.a. from the date of this Order till the date of realization against the respondent Nos.2 to 4. The amount

¹ 2009 ACJ 1298 (SC)

shall be deposited within a period of one month from the date of receipt of a copy of this order. On such deposit of compensation amount by the respondent Nos.2 to 4, the claimant is at liberty to withdraw the same without furnishing any security. No costs.

Miscellaneous petitions, if any pending, shall stand closed.

21.10.2022
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M.G.PRIYADARSINI,J