

HONOURABLE JUSTICE G. SRI DEVI

M.A.C.M.A. No.1203 of 2014

JUDGMENT:

Being not satisfied with the quantum of compensation awarded in the order and decree, dated 30.11.2007 passed in O.P.No.2637 of 2003 on the file of the XVI Additional Chief Judge-cum-II Additional Metropolitan Sessions Judge, Hyderabad (for short "the Tribunal) the appellant/claimant preferred the present appeal seeking enhancement of the compensation.

2. Brief facts of the case are that the appellant filed a petition under Section 166 of the Motor Vehicles Act claiming compensation of Rs.2,50,000/- for the injuries sustained by him in a road accident that occurred on 02.08.2002. It is stated that on that day, the appellant was traveling in Lorry bearing No.MP 9 KB 7078 from Indoor to Hyderabad and when they reached near Jangampally Village on Nizamabad-Hyderabad road, another lorry bearing No.AP 12 U 853 driven by its driver in a rash and negligent manner at high speed and dashed the lorry in which the appellant was travelling, due to which, the appellant sustained grievous injuries and he was admitted in Kamareddy Hospital and from there he was shifted to Osmania General Hospital, Hyderabad. Subsequently, the appellant took treatment in YCM Hospital, Pimpiri Village for the fracture of left leg

and tibia lateral right leg. Since the accident occurred due to the rash and negligent driving of the driver of the Lorry bearing No.AP 12 U 853, the appellant laid the claim against the respondents, who are the owner and insurer of the said lorry respectively.

3. The 1st respondent remained *ex parte*, while the 2nd respondent filed counter denying all the allegations made in the claim-petition. It is also contended that the accident caused due to the negligence of the driver of the lorry in which the appellant was traveling and that there was no negligence on the part of the offending vehicle. It is further contended that the compensation claimed is excessive and prayed to dismiss the claim-petition.

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

- 1) Whether the accident took place on 02.08.2002 at about 4.45 p.m., due to rash and negligent driving of Lorry bearing No.AP 12 U 853 by its driver?
- 2) Whether the petitioner is entitled to claim compensation from the respondents? If so, to what amount and from whom?
- 3) To what relief?

5. In support of his claim, the appellant examined himself as PW.1 besides examining the Doctor, who treated the appellant, as

PW.2 and got marked Exs.A1 to A18. On behalf of the respondents, no oral evidence was adduced but Ex.B1-Policy was marked.

6. After analyzing the evidence available on record, the Tribunal held that the driver of the Lorry bearing No.AP 12 U 853 was responsible for the accident and accordingly awarded an amount of Rs.74,000/- together with interest @ 7.5% per annum from the date of petition till the date of realisation to be paid by the respondents. Challenging the quantum of compensation awarded, the present appeal is filed by the appellant/claimant.

7. Learned Counsel for the appellant mainly submits that the quantum of compensation awarded by the Tribunal is on lower side and seeks enhancement of the same. He further submits that though the appellant had sustained 40% permanent partial disability, but the Tribunal without considering the same, did not award any amount under the head of loss of future earnings and therefore, prayed to enhance the compensation.

8. Per contra, the learned 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.

9. 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.

10. Insofar as the quantum of compensation, a perusal of the impugned order would show that in order to establish his case, the appellant examined himself as PW.1 and the Doctor, who treated him, as PW.2. Considering the nature of injuries sustained by the appellant and the nature of treatment undergone by the appellant, the Tribunal has rightly awarded Rs.30,000/- towards pain and suffering; Rs.15,000/- towards medical expenses; Rs.5,000/- towards extra nourishment and incidental charges; Rs.9,000/- towards loss of earnings during the period of treatment and bed rest, and Rs.15,000/- towards compensation for discomfort and inconvenience. The record reveals that no amount was awarded by the Tribunal under the head of loss of future earnings on account of the disability sustained by the appellant.

11. P.W.2-the doctor in his evidence deposed that the appellant had sustained 40% disability. On verification of Ex.A15-disability certificate, the same has not been issued by the Medical Board constituted for the said purpose. P.W.2 also deposed in his evidence that the appellant is facing difficulty in lifting weights, walking, driving and squatting. Therefore, the evidence of P.W.2 cannot be

doubted. Thus, the functional disability sustained by the appellant is fixed at 25%.

12. In view of nature of disability sustained, the appellant is also entitled to loss of earnings due to disability. The injured being an able bodied person aged about 30 years, doing business and as the accident took place in the year 2002, his monthly income can easily be fixed at Rs.3,000/- per month in view of the minimum wages prevailing during the said period. If the income of the appellant is taken at Rs.3,000/- per month, the annual income would be Rs.36,000/-. Since the appellant was aged about 30 years at the time of accident, in view of the judgment of **Sarla Verma Vs. Delhi Transport Corporation¹**, the suitable multiplier to be adopted for calculating the loss of earnings would be '17'. Therefore, the loss of earnings on account of his disability would be Rs.36,000/- x 17 x 25/100 = Rs.1,53,000/-. Except awarding the said amount, rest of the compensation awarded by the Tribunal under various heads is not disturbed.

13. Accordingly, the appeal is allowed by enhancing the compensation from Rs.74,000/- to Rs.2,27,000/-. The enhanced amount will carry interest at 7.5% p.a. from the date of order passed by the Tribunal i.e., 30.11.2007 till the date of realization, payable

¹ 2009 ACJ 1298

by respondents 1 and 2 jointly and severally. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE G. SRI DEVI

07.06.2022
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