

THE HON'BLE SRI JUSTICE N.TUKARAMJI

M.A.C.M.A.No. 1647 OF 2007

JUDGMENT:

Heard the learned counsel for the appellant and the learned counsel for the respondents.

2. This appeal is directed against the decree and award dated 04.01.2007 in O.P.No.1137 of 2004 on the file of the Additional Metropolitan Sessions Judge for the trial of Jubilee Hills Car Bomb Blast Case-cum-Additional Family Court-cum-XXIII Additional Chief Judge, Hyderabad.

3. Brief facts of the case are that on 02.11.2003 at about 2.15 p.m. while the petitioner was proceeding on the scooter at Bahadurpura cross roads, an A.P.S.R.T.C. bus bearing registration No. AP-10-Z-1004 (for short 'the bus') driven in rash and negligent manner, at high speed and dashed the scooter from behind, as a result, the petitioner slumped and suffered fractures. After the treatment, claiming medical expenditure and

loss of income earning capacity, filed petition seeking compensation of Rs.3,00,000/-.

4. The Tribunal after due enquiry and analyzing the evidence concluded that the accident had occurred due to negligent driving of the bus and awarded Rs.32,110/- for medical expenses, Rs.1,000/- towards extra nourishment, Rs.30,000/- towards pain and suffering, Rs.25,000/- towards loss of future earnings due to disability, in all Rs.87,110/- as compensation against the respondents.

5. In appeal, the appellant/claim petitioner (hereinafter the petitioner) contended that the Tribunal ought to have considered the trade licence/Ex.A-15 while determining the occupation and income of the petitioner. Further failed to take note that the injuries resulted in disability and affected his income earning capacity. The claim of transportation charges, damages to clothing and extra nourishment were declined without considering the materials. That apart, the damages caused to the scooter as shown in Ex.A-12 should have been awarded. The

interest ought to have been awarded at prevailing rate, thus prayed for reassessment of compensation.

6. In this position, the point arises for determination is:

“Whether the compensation awarded to the petitioner by the Tribunal is just and proper?”

7. The petitioner as PW-1 deposed that he had suffered fracture of both bones of left leg in the accident. The treating Doctor/PW-2 and the entries of discharge summary/Ex.A-6 are substantiating the injuries. Thus, the petitioner sustained fracture of both bones of left lower limb in the accident can be concluded.

8. The petitioner claimed the medical expenditure of Rs.1,25,000/-. However, filed the medical bills/Ex.A.7 for Rs.31,110/-. Having regard to the injuries and the period of treatment and the bills, granting Rs.31,200/- towards medical expenditure and Rs.5,000/- towards extra nourishment is found proper.

9. The petitioner pleaded inpatient treatment from 18.12.2003 to 26.12.2003 and the entries in the discharge bills dated 26.12.2003 are supporting this statement. The nature of injuries and the treatment are indicating that the petitioner would not have been in a position to attend any avocation at least for a period of two months.

10. By the entries in driving licence/Ex.A-14 the petitioner's age by the date of accident was 42 years. Though the petitioner pleaded business and monthly income at Rs.8,000/-, no document has been filed to prove the same. The renewal trade licence/Ex.A-15 cannot be proof of monthly income. However, considering the age and income earning capacity at relevant period, the monthly income of the petitioner at Rs.5,000/- can safely be believed. Thus, the petitioner is entitled for Rs.10,000/- towards loss of income during the period of treatment.

11. The petitioner's further plea is that the injuries suffered in the accident resulted in disability and loss of income earning capacity. The Doctor/PW-2 assessed the disability at 30% as

there is shortening of leg and the ankle stiffness. It is settled proposition that the physical disability *per se* cannot be loss of income earning capacity. The disability shall be considered basing on its effect in performing income earning avocation. Having regard to the facts that the doctors assessed disability of the particular limb, the disability affecting the avocation is believed at 20%.

12. It is also well settled that while assessing compensation the future prospects shall be taken into account. As per the ratio in Hon'ble Supreme Court in *Pappu Deo Yadav v. V. Naresh Kumar and others*¹ held future prospects of income as enunciated in *National Insurance Company v. Pranay Sethi*² is applicable in cases of assessment of 'loss of future earnings due to permanent disability'.

13. As the petitioner/injured was aged 42 years by the date of accident, 40% future prospects of income has to be added. Thus, the annual income of the appellant/injured would be

¹ 2020 SCC Online SC 752

² (2017) 16 SCC 860

Rs.84,000/- and 20% loss of income would be Rs.16,800/-. This sum if multiplied with the appropriate multiplier to the age of petitioner i.e. 14, the amount comes to Rs.2,35,200/-. The petitioner is entitled to this amount under this head towards 'Loss of Future Earnings due to disability'.

14. Further, the disability of a particular limb and shortening of leg would have affected the enjoyment of amenities of life. Considering the same, Rs.10,000/- is granted under the head 'Loss of Amenities'.

15. This apart, the Tribunal has granted Rs.30,000/- towards 'Pain and Sufferings', and considering the injuries and treatment undergone, the amount granted is found reasonable, as such this amount is confirmed.

16. In addition, the tribunal awarded amounts i.e. Rs.1,000/- towards 'transportation charges', Rs.5,000/- towards 'extra nourishment' and Rs.2,000/- towards damage to clothing are found rational. Accordingly, these amounts are affirmed.

17. The petitioner pleaded that in the accident the scooter suffered damages and he got it repaired under Ex.A-12 bills. A perusal of these bills shown that two bills said to have been issued in the name of Super Track Automobiles and Decent Scooter Works dated 25.04.2003. Nowhere the particulars of vehicle nor the petitioner's name is shown in the bills. Nowhere either the name of the petitioner's particulars and the scooter are mentioned. Above all, no one is examined to prove the genuinity of these bills. In this position, for want of tenable evidence, the Tribunal had rightly declined the claim of this aspect. Further the petitioner failed to show any evidence giving these bills for repair of the scooter.

18. Thus, the appellant/injured is entitled for compensation as under:

i)	Loss of medical expenditure	: Rs. 31,200/-
ii)	Extra nourishment	: Rs. 5,000/-
iii)	Loss of earnings during treatment	: Rs. 10,000/-
iv)	Loss of future earnings	: Rs. 2,35,200/-
v)	Pain and suffering	: Rs. 30,000/-
vi)	Loss of amenities	: Rs. 10,000/-

vii)	Transportation charges	: Rs.	1,000/-
viii)	Damage to clothing	: Rs.	2,000/-

Total : Rs. 3,24,400/-

19. The Section 168 of M.V. Act contemplates awarding just compensation to the claim petitioners. In *Nagappa's* Case and in catena of judgments the Hon'ble Apex Court held that awarding amounts more than the claimed amount is proper, if the petitioner is entitled for such sum.

20. Resultantly, the Appeal is allowed in the following terms,viz.,

(i) the petitioner is awarded Rs.3,24,400/- (Rupees three lakhs twenty four thousand four hundred only) with interest at 7.5% per annum from the date of petition till realization and costs;

(ii) the respondents are jointly and severally liable to pay the compensation;

(iii) the respondents are directed to deposit the awarded amount including the enhanced amount within one month from the date of receipt of a copy of this judgment; and

(iv) on such deposit, the appellant/petitioner is permitted to withdraw the entire amount.

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

N.TUKARAMJI, J

Date: -11-2022
CCM