

HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A. No.3384 of 2014

JUDGMENT:

Dissatisfied with the quantum of compensation awarded by the Chairman, Motor Accident Claims Tribunal-cum-V Additional District and Sessions Judge, Nalgonda at Miryalguda in O.P. No.780 of 2005, dated 08.03.2007, 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 30-05-2005 the petitioner was proceeding on a motorcycle bearing No. AP.24.B.8868 from Miryalguda to go to his village Kothanandikonda and when he reached the outskirts of Tripuraram village at about 4-00 p.m., near Kalyani Rice Mill, one Tractor and trailer bearing No. AP.24.B.9286 and 9287 came in rash and negligent manner at high speed and dashed his motorcycle from the opposite direction. As a result, the petitioner sustained fracture on right femur, comminuted fracture of 1/3rd right shaft tibia, fracture of distal end of right radius, grievous injuries on right wrist, right thigh, right knee, right leg and injuries all over the body. Immediately he was shifted to Kamala

Orthopedic Hospital, Miryalguda. Thus, he is claiming compensation of Rs.2,00,000/- under various heads.

3. Respondent No.1 set ex parte; Respondent No.2 filed counter disputing the manner of accident and the nature of injuries sustained by the petitioner 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 petitioner received injuries in the road accident, if so, whether the accident occurred due to rash and negligent driving of the tractor and trailer bearing registration No. AP 24 B 9286 and AP.24.B.9287 by its driver?*
- 2) *Whether the petitioner is entitled to claim compensation, and if so, what amount and from whom respondent?*
- 3) *To what relief?*

5. In order to prove the issues, on behalf of the petitioner, PWs.1 to 3 were examined 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.1,31,200/-

towards compensation along with proportionate costs and interest at 7.5% per annum from the date of petition till the date of deposit to the appellant-claimant against the respondent Nos.1 and 2 jointly and severally.

7. Heard the learned counsel for the appellant-claimant and the learned Standing Counsel for respondent No.2-The National Insurance Company Limited. 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 to 3 and Exs.A.1 to A.6, established the fact that the petitioner has sustained permanent disability due to the injuries received by him in the accident, but the Tribunal has awarded very meager amount 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. However the Tribunal after evaluating the evidence of PW-1 coupled with the documentary evidence available on record, held that the accident occurred due to rash and negligent driving of the driver of tractor and trailer bearing No. AP 24 B 9286 and AP.24.B.9287. 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 PW-2 Doctor who treated the petitioner shows that PW-1 came to his hospital on 30-05-2005 at 7-00 p.m. by road traffic accident with the injuries i.e., 1) laceration on right wrist dorsum, 2) laceration on right thigh 1/4th, 3) laceration on anterior aspect of right knee, 4) wound on right leg upper 3rd, 5) laceration on right heel, 6) open comminuted supra cadilyar fracture right femur, 7) open comminuted fracture of right tibia and 8) open comminuted fracture of right radius distal end and out of the above injuries, five are simple injuries and three are grievous injuries. PW-1 was treated as inpatient for 15 days and he spent Rs.30,000/- for his treatment. He had operated PW-1 and inserted implants of right leg and he cannot do hard regular duties and cannot move easily.

However, considering the evidence of PWs.1 and 2 and the nature of injuries sustained by the petitioner, the Tribunal awarded an amount of Rs.5,000/- towards pain and suffering, which is very less. Therefore, an amount of **Rs.20,000/-** is awarded towards pain and suffering. Further an amount of **Rs.15,000/-** is awarded towards extra nourishment, transportation and attendant charges.

12. With regard to the disability, PW-3 Civil Surgeon Specialist, deposed that the petitioner appeared before the District Medical Board and his disability has been estimated as 50%, as he has inflicted supra condylar fracture of right femur with non-union, united fracture of proximal and malunited collies fracture of 16 months duration. However, considering the nature of injuries sustained by the petitioner and the evidence of PWs.2 and 3, the Tribunal has rightly fixed the disability of PW-1 at 35%. According to the petitioner, he was a RMP doctor and the accident occurred during the year 2005 and as there was no income proof, the Tribunal taken the income of petitioner at Rs.2,000/- per month which is very less. Therefore, the income of the petitioner can be taken at Rs.3,000/-. As the claimant was aged about 45 years at the time of accident, the appropriate multiplier in light of

the judgment of the Apex Court in **Sarla Verma v. Delhi Transport Corporation**¹ would be “14”. Thus, the future loss of income due to 35% disability comes to Rs.3,000 x 12 x 14 x 35/100 = **Rs.1,76,400/-**, which the petitioner/claimant is entitled. In total, the claimant is entitled to **Rs.2,11,400.00** .

13. In the result, the M.A.C.M.A. is allowed by enhancing the compensation amount awarded by the Tribunal from Rs.1,31,200/- to **Rs.2,11,400/-**. The enhanced amount shall carry interest at 7.5% p.a. from the date of petition till the date of realization against the 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. On such deposit, he is entitled to withdraw the compensation amount without furnishing any security. The petitioner is not entitled for interest during the delay period. No costs.

Miscellaneous petitions, if any pending, shall stand closed.

M.G.PRIYADARSINI,J

02.12.2022
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¹ 2009 ACJ 1298 (SC)