THE HON'BLE JUSTICE M.G. PRIYADARSINI

M.A.C.M.A. No.1638 of 2015

JUDGMENT:

Being not satisfied with the quantum of compensation awarded in the award and decree, dated 30.08.2014 passed in M.V.O.P.No.574 of 2012 on the file of the Motor Vehicle Accidents Claims Tribunal-cum-X Additional Chief Judge, City Civil Court, 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.6,00,000/- for the injuries sustained by her in a road accident that occurred on 31.12.2011. It is stated that on 31.12.2011 at about 9:30 a.m., while the appellant was crossing road at Kothapet Cross Roads, Saroornagar, Hyderabad, one Car bearing No.AP 09 UU T/R 2072, owned by respondent No.1 and insured with respondent No.2, being driven by its driver in a rash and negligent manner at high speed, dashed the appellant, due to which the appellant fell down and sustained grievous injuries

all over the body. Immediately after the accident, the appellant was shifted to Kamineni Hospital, where she underwent operation and closed reduction and internal fixation with interlocking nailing of right tibia and left femur + closed reduction of k-wire fixation was done for which she spent Rs.2,00,000/- and she requires another amount of Rs.50,000/- for removal of nails etc. Since the accident occurred due to the rash and negligent driving of the driver of the Car, the appellant filed the claim-petition against the respondent Nos. 1 and 2, being the owner and insurer of the said Car.

3. After considering the claim and the counters filed by the respondents, and on evaluation of the evidence, both oral and documentary, the learned Tribunal has partly allowed the O.P. and awarded compensation of Rs.4,57,800/- with 7.5% interest per annum. Challenging the quantum of compensation awarded, the present appeal is filed by the appellant/claimant.

4. Learned counsel for the appellant mainly submits that the quantum of compensation awarded by the Tribunal is on lower side. It is further submitted that the evidence of PW.2 and Ex.A10, disability certificate, amply established that the appellant sustained 25% permanent disability, but the Tribunal without considering the same, has erroneously taken the disability at 10% and, therefore, prayed to enhance the compensation.

5. Per contra, the learned Standing Counsel appearing for respondent No.2, Insurance Company submits that the quantum of compensation awarded by the Tribunal is based on evidence and the same needs no interference.

6. 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 Car.

7. The short question that arises for consideration is "*whether the compensation awarded by the Tribunal is just and equitable*"?

8. In order to establish his case, the appellant examined herself as PW.1 and the doctor, who treated her, as PW.2. In support of the injuries as well as the disability sustained by her, the appellant got marked Exs.A3 and A10. As per Ex.A3-Wound Certificate, the appellant has sustained closed fracture shaft of left femur, closed segmental fracture of right tibia, displaced fractures of 2, 3 and 4 metatarsal head left foot closed. A perusal of Ex.A10, Disability Certificate discloses that the appellant sustained disability at 25%. P.W.2, who is an Orthopedic Surgeon and who treated the appellant, also stated that the appellant has sustained 25% disability. Thus, the functional disability sustained by the appellant is fixed at 25%, as stated by the doctor, which is supported by the disability certificate, instead of 10% as taken by the Tribunal. Taking the income of the appellant at Rs.1,32,000/- per annum as fixed by the Tribunal, the annual loss of earnings sustained by the appellant with the disability at 25% would be Rs.1,32,000/- x 25/100 = Rs.33,000/-. In view of the judgment of ***Sarla Verma Vs.***

Delhi Transport Corporation[1], the suitable multiplier to be adopted for calculating the loss of earnings would be ‘14’. Therefore, the loss of earnings on account of her disability would be Rs.33,000/- x 14 = Rs.4,62,000/-. The other amounts awarded by the Tribunal under the heads of loss of earnings during the period of treatment, transport charges, medical expenses and pain suffering need no interference as they appear to be just and reasonable. Therefore, except the said enhancement, rest of the amounts awarded by the Tribunal remains un-changed.

9. At this stage, the learned Counsel for the Insurance company submits that the claimant claimed only a sum of Rs.6,00,000/- as compensation and the quantum of compensation which is now awarded would go beyond the claim made which is impermissible under law.

10. In ***Laxman @ Laxman Mourya Vs. Divisional Manager, Oriental Insurance Company Limited and***

[1] 2009 ACJ 1298

another[2]*,* the Apex Court while referring to ***Nagappa Vs. Gurudayal Singh***[3] held as under:

> "It is true that in the petition filed by him under Section 166 of the Act, the appellant had claimed compensation of Rs.5,00,000/- only, but as held in Nagappa vs. Gurudayal Singh (2003) 2 SCC 274, in the absence of any bar in the Act, the Tribunal and for that reason any competent Court is entitled to award higher compensation to the victim of an accident."

11. In view of the Judgments of the Apex Court referred to above, the claimant is entitled to get more amount than what has been claimed. Further, the Motor Vehicles Act being a beneficial piece of legislation, where the interest of the claimant is a paramount consideration the Courts should always endeavour to extend the benefit to the claimants to a just and reasonable extent.

12. Accordingly, the appeal is allowed in by enhancing the compensation from Rs.4,57,800/- to Rs.7,35,000/-. The enhanced amount will carry interest at 7.5% p.a. from the date of award passed by the Tribunal till the date of

---

[2] (2011) 10 SCC 756
[3] 2003 ACJ 12 (SC)

realization. The respondent No.2, Insurance Company shall deposit the entire amount, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw entire amount. However, the claimant is directed to pay Deficit Court Fee on the enhanced amount. There shall be no order as to costs.

Pending Miscellaneous petitions shall stand closed.

JUSTICE M.G. PRIYADARSINI

17.11.2022
tsr

THE HON'BLE JUSTICE M.G. PRIYADARSINI

M.A.C.M.A. No.1638 of 2015

DATE: 17-11-2022