

THE HONOURABLE JUSTICE G. SRI DEVI

M.A.C.M.A. No. 1629 of 2014

JUDGMENT :

This appeal is filed by the claimant, aggrieved of the order and decree dated 12.08.2011 in O.P. No. 2713 of 2005 on the file of the III Additional Chief Judge, City Civil Courts at Hyderabad seeking enhancement of compensation.

2. On 24.07.2005, at 4:30 p.m., while the appellant-claimant was proceeding along with his cousin on a motorcycle as a pillion rider, the crime vehicle i.e., Lorry bearing No. AAT 1865, belonging to the respondent No. 1 and insured with respondent No. 2, being driven by its driver in a rash and negligent manner and at high speed, came in opposite direction and dashed the motorcycle. As a result, the claimant fell down and sustained grievous injuries. He was treated at NIMS Hospital, Hyderabad. Therefore, he laid a claim for Rs.6.00 lakhs against the respondents towards compensation under different heads.

3. The Tribunal, on examining the oral evidence of PWs.1 to 4, documentary evidence, Exs.A-1 to A-25 and Ex.B. 1, allowed the O.P. in part awarding a total compensation of Rs.4,69,095/- along with interest @ 6% per annum from the date of petition till the date of realization, to be paid by the respondent Nos. 1 & 2 jointly and severally within one month from the date of said

order. Not satisfied with the quantum of compensation awarded, the appellant-claimant has filed this appeal.

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

5. It is contended by the learned counsel for the appellant-claimant that the claimant was treated as inpatient at NIMS Hospital for nearly one month; that he was operated for ORIF with interlocking nailing right femur and external fixator of right tibia was done. As there was infection, he was again admitted in Rohini Medicate Private Limited, Hanamakonda on 23.09.2005. Due to the infection of interlocking nail, he was again admitted in NIMS Hospital on 14.10.2006 and was operated on 18.10.2006, implant was removed, llizaror was put to right femur and rush nailing to right femur was done. As there was shortening of right lower limb by 2 inches, the District Medical Board, Sangareddy, issued Ex.A.16, disability certificate, assessing the disability at 45% which has been substantiated by the evidence of P.W.3. The claimant was aged about 24 years at the time of accident and was working as a teacher in a private school and earning Rs.4,500/- per month as salary per month. It is contended that although the tribunal accepted the disability at 45%, but without considering Ex.A.23,

salary certificate, erred in restricting the monthly income of the claimant to Rs.3,000/- more particularly in the absence of any contra evidence adduced by the Insurance Company. Inasmuch as the right lower limb was shortened by 2 inches, under the head of loss of amenities and loss of expectation of life, learned counsel for the appellant, relying on the decision of the Apex Court in **Kavita v. Deepak and others**¹, submits that the claimant-appellant was 24 years old at the time of accident and due to permanent disability, the appellant is unable to lead full life and he is also unable to enjoy the normal amenities, which he would have enjoyed as a normal person had the accident did not take place. On the aspect of interest awarded by the Tribunal, the learned counsel submits that though the prevailing rate of interest at the particular point of time was 7.5%, the Tribunal has awarded only 6%, which is meager. Therefore, the learned counsel seeks enhancement of compensation awarded by the learned Tribunal.

6. On the other hand, the learned Standing Counsel for the respondent No. 2, Insurance Company, has contended that quantum of compensation granted by the learned Tribunal is reasonable. In the absence of any person examined to prove Ex.A.23, salary certificate, the tribunal has rightly disbelieved

¹ (2012) 9 SCC 604

the income of the claimant as Rs.4,500/- per month as a private teacher. Therefore, the tribunal has rightly taken the income at Rs.3,000/- per month.

7. As seen from the record, the claimant has not examined any person in connection with Ex.A.23, salary certificate, to substantiate his claim that he was earning Rs.4,500/- per month. Therefore, the tribunal was right in fixing the monthly income of the claimant at Rs.3,000/-. Admittedly, the right lower limb of the claimant was shortened by 2 inches and the medical board has assessed the permanent disability at 45% under Ex.A.16. The claimant was aged about 24 years at the time of the accident. Considering the same, basing on the decision of the Apex Court in **Kavita** (supra), this Court is inclined to grant an amount of Rs.50,000/- towards loss of amenities to life. Further, although the claimant could establish that he was on treatment for a period of one year, the tribunal did not award any amount towards loss of income. Therefore, under this head, this Court is inclined to award a sum of Rs.36,000/-. Considering the nature of injuries, period of treatment and disability, this Court is not inclined to disturb the other amounts awarded by the tribunal. As regards the rate of interest awarded by the Tribunal, as per the decision of the

Apex Court in **Rajesh and others v. Rajbir Singh and others**², the interest granted by the Tribunal @ 6% per annum is meager and the same is enhanced to 7.5% per annum on the awarded amount for the period specified by the tribunal and on the enhanced amount from the date of the order of the tribunal, till the date of realization.

8. In the result, the M.A.C.M.A. is allowed enhancing the compensation amount awarded by the Tribunal from Rs.4,69,095/- to Rs.5,55,095/-. The enhanced amount, from the date of the order of the tribunal and also the originally awarded compensation amount, from the date of the petition till 07.06.2007 and from 07.01.2010 shall carry interest at 7.5% p.a. till the date of realization, to be payable by the respondents 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, the claimant is entitled to withdraw the same. There shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

JUSTICE G.SRI DEVI

Date: 27.06.2022
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² 2013 ACJ 1403 = 2013 (4) ALT 35

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