

THE HONOURABLE SRI JUSTICE N. TUKARAMJI

M.A.C.M.A.No. 1475 of 2011

JUDGMENT:

Heard Sri K. Harimohan Reddy, learned counsel for the appellant/claim petitioner and Sri V. Krishna Rao, learned counsel for the second respondent/insurer.

2. This appeal has been preferred by the claim petitioner/ injured seeking enhancement of compensation awarded in the decree and judgment dated 17.02.2011 passed in O.P.No.928 of 2007 on the file of the Motor Accident Claims Tribunal – cum - XVI Addl. Chief Judge – cum - II Addl. Metropolitan Sessions Judge, Hyderabad.

3. The petitioner's case in brief is that on 31.12.2006 at about 2:00 AM, while he was proceeding on his TVS Motor cycle bearing registration No.KA3EA7805 (for short, 'the motor cycle') and when he was crossing ESI Cross Roads, one Auto bearing No.AP29T8066 (for short, 'the auto') driven by its driver in rash and negligent manner dashed his motor cycle. As a result, he slumped and suffered injuries all over the body.

Thus, filed petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the MV Act') seeking compensation of Rs.12,00,000/- under the heads of medical expenses and loss of income due to disability.

4. In enquiry, the petitioner got himself examined as PW1 and marked Exs. A1 to A13; also examined Doctors/PW2 to PW4 and Human Resources Manager in IIC Technologies Pvt., Ltd./PW5. Through, the Doctor/PW3, case sheet/Ex.X1 and Manager/PW5, pay slips for the month of August and October, 2007 were marked as Exs.X2 and X3.

5. The learned Tribunal after considering the material evidence concluded that the accident was caused because of the rash and negligent driving of the auto and awarded Rs.7,35,000/-(Rupees Seven Lakhs Thirty Five Thousand only) with interest at 7.5% per annum against the owner and insurer of the Auto/ 1st and 2nd respondents.

6. In the appeal, learned counsel for the appellant/petitioner (hereinafter, 'the petitioner') contended that the Tribunal had arbitrarily taken the monthly income of the

petitioner against the oral and documentary evidence placed on record. Further contended that future prospects and the evidence of doctor about the future medical expenses i.e., Rs.25,000/- were discarded without any reason and awarded only Rs.15,000/-. That apart, loss of amenities and other determinants were not taken into account and improper multiplier had been employed. Thus, prayed for reassessment and to grant just and proper compensation.

7. Learned counsel for the 2nd respondent /insurer (hereinafter 'the respondent') pleaded that the Tribunal had rightly considered the evidence placed by the petitioner and appropriate compensation was granted. The claims raised by the petitioner were already considered by the Tribunal and in absence of any other tenable ground, the impugned award shall not be interfered.

8. In these rival stances, the point that arises for determination is:

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

9. The petitioner as PW1 pleaded that he has sustained fracture of pelvic, fracture of right finger, head injury and blunt injuries all over the body. A combined reading of the entries in the injury certificate/Ex.A3 coupled with the oral evidence of the doctors/PWs.2 and 3 and the discharge summary/Ex.A4 are manifesting that the petitioner suffered multiple injuries especially at pubic area and undergone treatment for gall bladder repair and planting of pubic symphyam in Remedy Hospital.

10. The petitioner pleaded that he had incurred medical expenditure to the tune of Rs.71,623/- and placed medical bills/Ex.A11, which reflecting the amount of Rs.52,470/-. The doctor/PW4 in his evidence confirmed that the medical bills are issued by the Remedy hospitals. Basing on the material and counting the probable incidental expenditure, the Tribunal had granted Rs.70,000/- and this finding being reasonable, affirmed.

11. With regard to the future medical expenditure, the doctor/PW2 stated that for removal of the plates inserted for

planting pubic symphyam, the petitioner would incur Rs.25,000/-. However, the Tribunal had granted only Rs.15,000/- without any justification. Therefore, considering the doctors' evidence and the required amount mentioned in the estimate/Ex.A8 granting Rs.25,000/- towards future treatment is found appropriate.

12. The petitioner pleaded that he had suffered loss of income during the period of medical treatment and claimed that his age was 26 years and as software engineer, he used to earn Rs.21,000/- per month by the date of accident.

13. To substantiate the age, no document is filed. However, a perusal of record is disclosing that in Ex.A1/First Information Report and Ex.A2/charge sheet, his age was shown as 26 years; in Ex.A3/injury certificate showing the age as 35 years, in Ex.A5/the disability certificate issued by the medical Board is showing the age of 25 years; in Ex.A6/prescriptions, Ex.A7/disability certificate and Ex.A8/ Estimation certificate are indicating the age at 28 years; whereas the discharge summary/Ex.A4 and case sheet/Ex.X1 are reflecting the age at

27 years. In this position, considering the plea in the petition, though there is variance in evidence, it would be appropriate to consider the age between 26-30 years for the purpose of assessment of compensation.

14. To prove the occupation, the petitioner filed his pay slip for the month of December, 2018/Ex.A9 and examined Human Resource Manager of his employer/PW5, who asserted that the petitioner was an employee in their company and used to earn net monthly salary of Rs.18,038/- and gross salary of Rs.18,958/- and he worked till October, 2007. In cross-examination, it is elicited that there is no authorization letter from the company filed and he has not signed Ex.X2 and Ex.X3/ pay slips for the month of August and October, 2007 respectively.

15. However, having regard to the fact that the respondent has not disputed the claimed occupation, which is supported by the statement of PW5 and though it was suggested that the pay slips/Exs.X2 and X3 were fabricated by PW5, the pay slip/Ex.P9 filed by the petitioner was neither denied nor

confronted, the net income of Rs.18,000/- shown in Ex.A9, could be taken as monthly income of the petitioner. Therefore, in absence of specific material, having regard to the injuries suffered and other probabilities, awarding two months income i.e., Rs.36,000/- towards loss of income during the period of treatment, is found proper.

16. The petitioner also pleaded that he has been suffering disability due to which he would suffer loss of future earnings. The Doctors/PW2 and PW3 deposed that the petitioner had suffered fracture of pelvic and he would not be able to sit for long time as undergone the planting pubic symphyam which restricted the movement of his knee joint and the disability was assessed as 30% which is partial permanent in nature. The disability summary/Ex.A4 is substantiating this version. In cross-examination of the doctors, no material aspect is elicited.

17. It is settled proposition that the effect of disability on the income earning capacity is the factor for consideration in assessing compensation for the disability and it is common

knowledge that the disability rated by the doctor would refer to the physical disability. Thus, taking the particular of inability to sit for long time and other inconvenience stated by the doctors, the petitioner's physical disability affecting the income earning capacity is believed at 25%.

18. In the dictum of the Hon'ble Apex Court in **Pappu Deo Yadav vs Naresh Kumar**¹ held that future prospects enunciated in the dictum of **National Insurance Co. Ltd. Vs. Pranay Sethi and others**² is equally applicable to the cases of injuries in assessment of compensation. Therefore, by the age and pleaded occupation of the petitioner, 40% of the income has to be added towards future prospects. Accordingly, the annual loss of income at 25% would be Rs.75,600/-. If this sum is multiplied with the multiplier applicable to the age of petitioner i.e., 17, the total amount comes to Rs.12,85,200/-. The petitioner is entitled to this amount towards loss of future income owing to the disability.

¹ AIR 2020 SC 4424

² 2017 (16) SCC 860

19. Considering the injuries, period of treatment and the continuance of sufferings, Rs.50,000/- for the pain and sufferings and Rs.10,000/- for extra nourishment and as the disability would probably affect enjoyment of life awarding Rs.20,000/- towards loss of amenities is found proper.

20. Thus, the petitioner is eligible for the compensation as follows:

Loss of income due to disability	Rs.12,85,200
Medical expenditure	Rs.70,000
Future treatment	Rs.25,000
Extra Nourishment	Rs.10,000
Loss of income during treatment	Rs.36,000
Pain and suffering	Rs.50,000
Loss of amenities	Rs.20,000
TOTAL	Rs.14,96,200

21. Having regard to the statutory obligation under Section 168 of the MV Act and dictum of the Hon'ble Apex Court **Nagappa Vs. Gurudayal Singh & Ors**, as the petitioner is entitled for just compensation, even if it is more than the amount claimed in the petition, the compensation amount arrived above is awarded to the petitioner.

22. Resultantly, the appeal is allowed as hereunder:

- a. The appellant/claim petitioner is awarded compensation of **Rs.14,96,200/-** (Rupees fourteen lakhs ninety six thousand two hundred only) with interest at 7.5% per annum from the date of petition till realization;
- b. The respondents are liable to pay the compensation and they are directed to deposit the awarded amount with interest within one month from the date of receipt of copy of the order;
- c. On deposit of enhanced amount with interest the appellant/petitioner is permitted to withdraw the entire amount.

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

N. TUKARAMJI, J

Date:08.09.2022
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