

HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A. No.3486 of 2019

JUDGMENT:

Dissatisfied with the quantum of compensation awarded by the XIII Additional District Judge, L.B.Nagar, Ranga Reddy District in M.V.O.P. No.467 of 2015, dated 30.10.2018, 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 26.05.2015 at about 11-15 hours while the petitioner was proceeding on his motorcycle bearing No. TS 02 EC 7020, one lorry bearing No. AP 36 TB 5588 being driven by its driver came in rash and negligent manner at high speed and dashed his motorcycle while dashing a car bearing No. TS 03 DTR 8179 which was proceeding ahead of his motorcycle, due to which he sustained grievous injuries and inmates of the car died on the spot. Immediately he was shifted to Osmania General Hospital, wherein he took treatment as inpatient and spent more than Rs.50,000/- towards treatment. According to the petitioner, he was aged about 20 years, ITI student and also doing as private tutor, and used to get an amount of Rs.9,000/- per month. Due to the accident, his right leg was amputated and he could not

attend his ITI examination and lost his academic year and suffered lot of mental agony apart from other difficulties. Thus, he is claiming compensation of Rs.10,00,000/- under various heads.

3. Respondent Nos.1 and 2 remained ex parte; Respondent No.3 filed counter disputing the manner of accident, nature of injuries sustained by the petitioner, age, avocation and income of the claimant 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 accident is occurred on 26.05.2014 at about 11.15 hours near Mallampally Cross Roads, Bhoopalapally causing injuries sustained by the petitioner in a road accident, due to rash and negligent driving of driver of lorry bearing No. AP.36.TB.5588 being driven by respondent No.2?*
- 2) *Whether the petitioner is entitled to compensation, if so, to what amount and from which respondents?*
- 3) *To what relief?*

5. In order to prove the issues, on behalf of the petitioner, PWs.1 and 2 were examined and got marked Exs.A1 to A8. On behalf of the respondent No.3-Insurance Company, no witnesses

were examined, however, copy of insurance policy was marked as Ex.B1.

6. On considering the oral and documentary evidence available on record, the Tribunal has awarded an amount of Rs.4,75,000/- towards compensation along with proportionate costs and interest at 7.5% per annum from the date of petition till the date of realization to the appellant-claimant against the respondent Nos.1 and 2, jointly and severally. Though the Tribunal held that the respondent Nos.1 and 2, as owner and insurer of the lorry, but in fact, the respondent Nos.1 and 2 are owner and driver and respondent No.3 is the insurer of the lorry.

7. Heard the learned counsel for the appellant-claimant and the learned Standing Counsel for respondent No.3-Insurance Company. Perused the material available on record.

8. The learned counsel for the appellant-claimant has submitted that although the claimant 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.3 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 lorry bearing No. AP.36.TB.5588. Now the only dispute in the present appeal is with regard to the quantum of compensation.

11. Learned counsel for the appellant submitted that the petitioner was ITI student and a private tutor and earning Rs.9,000/- per month, but the Tribunal has not at all considered the income of the injured. Furthermore, it is contended that the petitioner has sustained 70% disability due to the injuries sustained by him in the above accident and in order to prove the same, Ex.A6 disability certificate which was issued by the Medical

Board, Karimnagar District was filed. But the Tribunal has not considered the disability certificate and further the Tribunal by discarding the evidence of PW-2, Doctor who issued the disability certificate and also the disability certificate, stating that the disability certificate was not valid for medico legal cases. Ex.A4 is the discharge summary issued by Osmania General Hospital which shows that the petitioner has traumatic amputation of right leg D/3, fracture m/3 shaft of right femur. Ex.A5 photographs shows that the petitioner's right leg was amputated below knee level. PW-2 who issued the disability certificate stated that on 23.11.2015 he examined the petitioner in their hospital and found disability at 70% due to post traumatic amputation of right lower limb up to below knee joint which is permanent in nature and that he cannot walk and sit without support and facing difficulty to attend his day to day activities. This Court has perused the entire record and found that the petitioner has sustained severe grievous injuries and also his leg was amputated. Considering the nature of injuries sustained by the petitioner, the Tribunal awarded Rs.60,000/- towards pain and sufferance, Rs.10,000/- towards extra nourishment, attendant charges, Rs.5,000/- towards transportation charges, Rs.1,00,000/- towards loss of marriage

prospects and Rs.1,00,000/- towards loss of happiness and loss of amenities, which are just and reasonable and as such, they are not disturbed. However, the Tribunal awarded an amount of Rs.2,00,000/- towards loss of disability, which is very less. Therefore, this Court is inclined to enhance the same to **Rs.4,00,000/-** for the loss of earning capacity due to the disability sustained by him. Further an amount of **Rs.10,000/-** is awarded towards loss of income for two months @ Rs.5,000/- per month. In total, the claimant is entitled to **Rs.6,85,000/-**.

13. With regard to the liability, respondent Nos.1 to 3 are owner, driver and insurer of the offending lorry and the policy was in force as on the date of accident. Therefore, respondent Nos.1 to 3 are jointly and severally liable to pay compensation to the petitioner.

14. In the result, the M.A.C.M.A. is partly allowed by enhancing the compensation amount awarded by the Tribunal from Rs.4,75,000/- to **Rs.6,85,000/-**. 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 to 3 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. No costs.

Miscellaneous petitions, if any pending, shall stand closed.

13.12.2022
pgp

M.G.PRIYADARSINI,J