

THE HON'BLE SRI JUSTICE N.TUKARAMJI

M.A.C.M.A.No. 1876 OF 2011

JUDGMENT:

Heard the learned counsel for the appellant and the learned counsel for the respondents and perused the material on record.

2. Aggrieved by the quantum of compensation awarded in the decree and award dated 25.07.2005 in O.P.No.1700 of 2001 on the file of the Chairamn, Motor accidents Claims Tribunal-cum-V Additional District Judge,Nizamabad, the claim petitioner preferred this appeal.

3. Brief facts of the petitioner's case is that, on 20.08.2001 at about 9 p.m. while himself was proceeding on the scooter bearing registration No.AAJ-818 (for short 'the scooter') as pillion rider en route to the Old Bus Stand, Armour, a car bearing registration No.AP-25-7806 (for short 'the car') driven by its driver in rash and

negligent manner dashed the scooter and a wheel of the car ran over him and caused grievous injuries. After the treatment, claiming medical expenditure and disability filed claim petition seeking compensation of Rs.2,00,000/-.

4. The learned tribunal after considering the materials on record held that the accident had been caused on account of rash and negligent driving of the car and awarded Rs.54,250/- with interest at 9% per annum against the owner and insurer of the car/1st and 2nd respondent.

5. In appeal, the appellant/claim petitioner (hereinafter 'the petitioner') contended that the Tribunal had failed to consider the pleadings as to the occupation and income and erroneously assumed notional income at Rs.15,000/- per annum and assessed loss of income during the period of treatment and in the future were assessed. The Tribunal ought to have considered the expenses for transportation and for loss of amenities.

Thus, prayed for reassessment and for granting just compensation.

6. In spite of due notice, the respondents chose to remain silent.

7. In this position, the point arises for determination is:

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

8. The Doctor/PW-2 deposed that on 21.08.2001 the petitioner was admitted in his hospital with fracture of both bones of left leg and he was operated on 26.08.2001 and discharged on 08.09.2001. Having regard to this evidence, the fact that the petitioner suffered injuries in the accident, as stated by the doctor can safely be concluded.

9. The petitioner claimed Rs.1,00,000/- towards medical expenditure. The tribunal by considering the evidence of doctor and medical certificate/Ex.A-3, cash receipt/Ex.A-4 and bunch of medical bills/Exs:A-7 to 40, has awarded Rs.50,000/- as medical expenditure. As

this calculation is reasoned, the amount granted under this head is affirmed.

10. Considering the nature of injuries and the treatment, the tribunal has held that for healing of fracture injuries, the petitioner would not have attended any income earning avocation for about three months.

11. With regard to occupation and income except the version of PW-1/injured no corroborating material is on record. However, considering the age and possible earning income capacity and the wages of manual labour at relevant period, setting the income at Rs.15,000/- per annum is found unreasonable. Hence, by considering Rs.100/- as daily wage, a monthly income can safely be taken at Rs.3,000/- per month. Thus, Rs.9,000/- is granted towards loss of income during the period of treatment.

12. The petitioner also pleaded that due to the disability caused by the injuries, his income earning capacity has been affected and to prove it, the disability certificate/Ex.C-1 issued by the Government Hospital was

placed on record. The Tribunal by considering the injuries, doctor's evidence and the disability certificate believed 10% of disability in loss of income earning capacity. Having regard to the settled position that the physical disability affecting the income earning capacity is the factor to be considered in assessment of compensation, and in absence of any other aspect to differ, the finding of the tribunal is affirmed.

13. In this context, to note, the Hon'ble Supreme Court in *Pappu Deo Yadav v. V. Naresh Kumar and others*¹ held that the future prospects of income as enunciated in *National Insurance Company v. Pranay Sethi*² is applicable in cases of assessment of compensation for the 'loss of future earnings due to permanent disability'.

14. The petitioner pleaded that by the date of the accident he was aged about 25 years No particular document is filed to prove the age of the petitioner. The medical certificate/Ex.A-3, disability certificate/Ex.C-1

¹ 2020 SCC Online SC 752

² (2017) 16 SCC 860

issued on 29.04.2005 is showing the age as 29 years and in the charge sheet, the petitioner age had been shown as 28 years. In the absence of any other material, relying on the charge sheet/Ex.A-2 which is filed in the year of accident, the age of the petitioner is taken as 28 years and for this age, 40% of the income has to be added towards future prospects. Thus, the annual loss of income at 10% due to disability would be of Rs.5,040/-. If this amount is multiplied with the relevant multiplier applicable to the age of the petitioner i.e. 17, the sum would come to Rs.85,680/- (Rs.420/- x 12 x 17). The petitioner is entitled for this amount under the head loss of future earnings owing to the disability.

15. The tribunal has awarded Rs.10,000/- towards pain and suffering. Considering the fact that the fracture injuries of left lower limb, period of treatment and the disability with limited knee motion and limb in walking, granting Rs.20,000/- towards pain and suffering and

Rs.10,000/- for loss of amenities, and Rs.5,000/- towards transportation is found appropriate.

16. Thus, the appellant/injured is entitled for compensation as under:

i)	Loss of medical expenditure	: Rs. 50,000/-
ii)	Loss of future earnings	: Rs. 85,680/-
iii)	Pain and suffering	: Rs. 20,000/-
iv)	Loss of income for 3 months	: Rs. 9,000/-
v)	Loss of amenities	: Rs. 10,000/-
vi)	Transportation charges	: Rs. 5,000/-

Total		: Rs.1,79,680/-

17. Resultantly, the Appeal is allowed in part in the following terms,viz.,

(i) the appellant/petitioner is awarded Rs.1,79,680/- (Rupees one lakh seventy nine thousand six hundred eighty only) with interest at 7.5% per annum and proportionate costs from the date of petition till realization. Accordingly the impugned Award stands modified.

(ii) the finding of the tribunal as to the joint and several liability of the respondents to pay the compensation is affirmed;

(iii) the respondents are directed to deposit the awarded amount including the enhanced amount within one month from the date of receipt of a copy of this judgment; and

(iv) on such deposit, the appellant / petitioner is permitted to withdraw the entire amount.

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

N.TUKARAMJI, J

Date:26-08-2022
CCM