

HONOURABLE JUSTICE M. G. PRIYADARSINI

M.A.C.M.A. NO. 1321 OF 2015

JUDGMENT:

Not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal-cum-XXV Addl. Chief Judge: City Civil Court, Hyderabad, in O.P. No. 2208 of 2012, dated 05-01-2015, the present appeal is filed by the claimant seeking enhancement of compensation.

2. Appellant is the petitioner in the main O.P. According to the petitioner, on 18-01-2012 at about 3.00 P.M, the petitioner who was working as a driver in Arunachal Logistics Private Limited, Transport Company, loaded his lorry bearing No. AP-09-TA-1613 with Iron Ore Load and while proceeding from Kodada to Racharla, Kurnool District and when he reached Veldurthi Village of Kurnool District on NH-7 Road, the driver of another Lorry bearing No. AP-09-TA 1562 which was coming behind the above referred Lorry came at high speed in a rash and negligent manner and overtaken the claimants Lorry. Immediately, the petitioner has applied sudden

breaks, in the process of which, dashed the crime Lorry as a result the cabin of the Lorry was completely damaged and his both legs were crushed and the foot of the right leg got detached from the leg and also sustained head injury and another injury to left hand. Immediately, he was shifted to Government Hospital at Kurnool and from there he was shifted to NIMS hospital for better treatment. The petitioner was operated and the foot was amputated above knee and has undergone plastic surgery and was discharged on 14.02.2012 and again he was admitted to NIMS hospital for plastic surgery and ever since the date of the accident, the petitioner became disabled and spent huge amount for treatment. According to the petitioner, he was aged about 50 years and working as driver of heavy Transport vehicle and was earning Rs. 20,000/- salary and hence he laid the claim for Rs. 25,00,000 (Twenty Five Lakh Rupees) as compensation under various heads against the respondents, owner and the insurer of the lorry.

3. Before the Tribunal, while respondent no. 1 remained ex parte, respondent No. 2 filed counter denying the averments of the claim

petition and the manner in which the accident occurred, including the age, avocation and income of the injured.

4. Based on the above pleadings, the Tribunal framed the following issues:

- 1. Whether the petitioner sustained injuries due to the rash and negligent driving of driver of Lorry bearing No. AP 09 TA 1562?*
- 2. Whether the petitioner is entitled to compensation, if so, how much and from whom?*
- 3. To what relief ?*

5. In order to prove the issues, PWs. 1 to 5 were examined and Exs. A1 to A 20 and Ex. X1 got marked on behalf of the petitioner. On behalf of the respondent No.2 no witness was examined and no documents were marked.

6. Considering the oral and documentary evidence available on record, the Tribunal has awarded an amount of 15,20,000/- towards compensation to the appellant-claimant along with

proportionate cost and interest @ 6 % per annum from the date of order till the date of realization against the respondent Nos. 1 & 2.

7. The learned counsel for the appellant-claimant has submitted that although the claimant, by way of evidence of P.W.2 doctor, coupled with documentary evidence, established that he had sustained grievous injuries resulting in permanent disability of Appellant-claimant, the Tribunal awarded very meager amount of Rs. 15,20,000/- under various heads and therefore, he seeks enhancement of compensation. It is also submitted that as per the principles laid down by the Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi and others***¹, the appellant is also entitled to the future prospects at 10%.

8. On the other hand, the learned Standing Counsel appearing on behalf of respondent No. 2 sought to sustain the impugned award of the Tribunal contending that after considering the manner of accident and the nature of injuries sustained by the petitioner,

¹ 2017 ACJ 2700

the learned Tribunal has awarded reasonable compensation and the same needs no interference by this court.

9. Admittedly, there is no dispute with regard to the manner of accident. However, the Tribunal after evaluating the evidence of P.W-1, coupled with documentary evidence i.e., Exs.A.1 & A.2,, rightly held that accident occurred due to rash and negligent driving of the driver of the Lorry bearing No. AP 09 TA 1562 and the said finding needs no interference by this Court.

10. Now, the only dispute in the present appeal is with regard to the quantum of compensation. Learned counsel for appellant/claimant submitted that the petitioner was working as a driver in Arunachal Logistics Private Limited, Transport Company and was earning Rs. 20,000/- salary and due to the accident, the tribunal has rightly assessed the functional disability at 100%, but not justified in restricting the monthly income of the claimant at Rs.15,000/- even though the employer, P.W.4 categorically asserted that the claimant was being paid Rs.20,000/- to 25,000/- per month.

11. P.W.2, Doctor who treated the petitioner, deposed that he found crush injury to right lower limb with auto imputation below the level of the knee and Grade III B compound fracture, dislocation of left ankle with fracture fibula and closed fracture of radius and sustained head injury. Further, he has also stated that P.W.1 can never carry on his profession as a driver and as such the above said disability will be 100% in case of functional disability. Basing on the said evidence, the tribunal has rightly assessed the functional disability at 100%.

12. Further, Ex. A5 to A11 are discharge summaries issued by NIMS Hospital were proved by P.W. 2. Though, the learned Tribunal discussed elaborately about the injuries sustained, the manner in which the accident occurred, including the age, avocation and income of the deceased but did not grant any amount towards disability or calculated the same in terms of money.

13. As regards the income, as per the petitioner, he is working as a driver of heavy Transport vehicle and was earning Rs. 20,000/- as salary and in proof of the same Ex. X1 Salary Certificate was marked and apart from examining P.W.4, employer, to prove his

income. But, as rightly observed by the tribunal, even as per the evidence of P.W.4, the monthly income of the claimant is at variation and not a certain income and his income depends based on the trips in a month. Therefore, the tribunal was right in taking the monthly income of the claimant at Rs.15,000/-.

14. Insofar as the future prospects are concerned, recently, the Apex Court in **Sidram v. The Divisional Manager, United India Insurance Company Limited** (CIVIL APPEAL No. 8510 OF 2022, dated 16.11.2022) held as under:-

“31. It is now a well settled position of law that even in cases of permanent disablement incurred as a result of a motor-accident, the claimant can seek, apart from compensation for future loss of income, amounts for future prospects as well. We have come across many orders of different tribunals and unfortunately affirmed by different High Courts, taking the view that the claimant is not entitled to compensation for future prospects in accident cases involving serious injuries resulting in permanent disablement. That is not a correct position of law. There is no justification to exclude the possibility of compensation for future prospects in accident cases involving serious injuries resulting in permanent disablement. Such a narrow reading is illogical because it denies altogether the possibility of the living victim progressing further in life in accident cases – and admits such possibility of future prospects, in case of the victim’s death.”

15. In view of above said decision, the appellant is entitled to future prospects. As the age of the appellant is 50 years at the time of the accident, he is entitled the future prospects at 10%.

16. Therefore, by adding 10% future prospects, the monthly income of the appellant comes to Rs.16,500/- (Rs.15,000/- + Rs.1,500/-). In view of the judgment of **Sarla Verma Vs. Delhi Transport Corporation**², the suitable multiplier to be adopted for calculating the loss of earnings would be '11'. Therefore, the loss of earnings on account of the disability would be Rs.16,500/- x 12 x 11 = Rs.21,78,000/-. That apart, considering Exs.A.7, A.9 & A.12, the tribunal has rightly awarded a sum of Rs.1,00,000/- towards treatment and medical expenses. However, the tribunal was not right in awarding any amount towards travel expenses. Considering Ex.A.13, this Court is inclined to award a sum of Rs.50,000/- under the head of transportation charges. Furthermore, as the evidence i.e. Ex.A.16, discloses that the claimant need to change the artificial limb from time to time, this court is inclined to award a sum of Rs.1,00,000/ towards artificial limbs. Further, towards pain and suffering, the claimant is awarded a sum of Rs.30,000/- towards pain and suffering. So also, under the head of extra nourishment and

² 2009 ACJ 1298

attendant charges, the claimant is awarded a sum of Rs.20,000/-. Thus, in all, the claimant is entitled to a total sum of Rs. 24,78,000/-.

17. Accordingly, the appeal is partly allowed by enhancing the compensation from Rs.15,20,000/- to Rs. 24,78,000/-. The enhanced amount shall carry interest at 7.5% p.a. from the date of petition till the date of realization. The 2nd respondent is directed to deposit the said amount within two months from the date of receipt of a copy of this judgment.

On such deposit, the appellant is permitted to withdraw the entire compensation amount. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE M.G. PRIYADARSINI

26.12.2022

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