

HON'BLE SMT. JUSTICE G. ANUPAMA CHAKRAVARTHY

M.A.C.M.A.No.3962 of 2012

JUDGMENT :

The appeal is arising out of the judgment and decree in O.P.No.2095 of 2006, dated 07.08.2009 on the file of Motor Accident Claims Tribunal-cum-II Additional Chief Judge, City Civil Court, Hyderabad.

2. For the sake of convenience, the parties are referred to as arrayed in the OP.

3. The claimant is the appellant. The O.P. is filed before the Tribunal under Sections 166 and 140 of the Motor Vehicles Act, claiming compensation of Rs.25,00,000/- for the injuries sustained by the appellant/claimant in the accident that occurred on 17.07.2006.

4. On the date of accident, while the claimant was proceeding on his motorcycle bearing No.AP-22-K-4542 in Kalwakurthy town and when he reached Mahaboobnagar Cross Roads at about 1.45 p.m., an APSRTC bus bearing No.AP-10-Z-9709, which was being

driven by its driver at a high speed and in a rash and negligent manner, dashed against the motorcycle of the appellant and as a result, the appellant sustained fracture of his right leg and muscle was completely peeled off from the knee to foot and he also sustained crush injury to his right foot apart from other multiple injuries all over the body. Immediately after the accident, he was shifted to Osmania General hospital, Hyderabad and from there to Sigma hospital, Secunderabad, for better treatment.

5. It is the specific contention of the claimant before the Tribunal that due to the injuries and fractures sustained by him in the accident, he underwent several surgeries in the course of treatment by incurring more than Rs.1,50,000/- apart from expenses for extra-nourishment and transport charges. It is his case that on account of amputation of his right leg, he suffered permanent disability, due to which, he became unfit and lost his job and that he needs one attendant throughout his life. Therefore, he claimed compensation of Rs.25,00,000/-.

6. A detailed counter was filed by the respondents/RTC denying the nature of the accident, the medical expenditure incurred and also about contributory negligence on the part of the claimant and prayed to dismiss the claim.

7. The Tribunal, after considering the oral and documentary evidence on record, has granted compensation of Rs.2,30,000/-. Being aggrieved by the said order, the claimant has preferred this appeal.

8. Heard learned counsel for both the parties and perused the record.

9. It is contended by the learned counsel for the appellant that the Tribunal did not consider the oral evidence of PWs.2 and 3 i.e. the Orthopaedic Surgeons, who treated the injured. PW-2 stated that the claimant sustained partial and permanent disability of 30% and accordingly issued Ex.A-8/wound certificate. However, the Tribunal did not consider the same and has erroneously reduced the disability to 10%. Therefore, he prayed for enhancement of compensation by taking into consideration 30% disability.

10. On perusal of the entire evidence on record, there is no dispute as to the manner in which the accident occurred. The evidence of PW-2/Orthopaedic Surgeon discloses that he examined the claimant on 22.07.2008 clinically and radiologically and deposed that the claimant sustained crush injury of right foot with loss of soft tissue with open fracture of calcaneo cuboid joint and talo navicular joint. He further deposed that the claimant developed severe contraction of right foot with loss of heel pad due to above said injury and though the claimant can sit and stand normally, he cannot walk long distance and cannot discharge duties as Constable normally. Thus, he issued Ex.A-8/wound certificate, certifying that the claimant has sustained partial and permanent disability of 30%.

11. Further, the claimant was aged 26 years as on the date of accident, therefore, as per the judgment of Hon'ble Supreme Court in **Smt.Sarla Verma v. Delhi Transport Corporation & another**¹, the appropriate multiplier is '17', but the Tribunal has erred in applying the multiplier '18'.

¹ (2009) 6 SCC 121

12. Since the salary of the claimant is Rs.7,176/- per month, by applying the multiplier '17' and taking the disability at 30%, the loss of income would come to Rs.4,39,171/- (Rs.7,176 X 12 X 17 X 30/100). By adding the future prospects @ 50%, it would come to Rs.6,58,756/- (Rs.4,39,171 + 2,19,585). Further, the claimant is also entitled for Rs.27,194/- towards medical expenses, for Rs.25,000/- towards transportation and for another Rs.25,000/- towards extra-nourishment as has been granted by the Tribunal. Though the Tribunal has granted Rs.2,00,000/- towards loss of amenities, the claimant is not entitled for the same, as future prospects are granted @ 50%.

13. Thus, the claimant is entitled to the compensation under the following heads;

1. Loss of future income -	Rs.6,58,756/-
2. Medical expenses -	Rs.27,194/-
3. Transportation -	Rs.25,000/-
4. Extra-nourishment -	Rs.25,000/-
TOTAL -	Rs.7,35,950/-

14. Accordingly, appeal is allowed by enhancing the compensation amount awarded by the Tribunal from Rs.2,30,000/- to Rs.7,35,950/- with costs and interest at the rate of 7.5% per

annum from the date of petition till the date of realization, payable by respondent Nos.1 and 2 jointly and severally, within two months from the date of receipt of a copy of this order. As the accident occurred in the year 2006, the claimant is entitled to withdraw the entire amount.

Pending miscellaneous applications, if any, shall stand closed.

G.ANUPAMA CHAKRAVARTHY, J

Date: 21.12.2022

ajr