

THE HONOURABLE SRI JUSTICE A.SANTHOSH REDDY

M.A.C.M.A.No.1863 OF 2016

JUDGMENT:

This appeal is directed against the award dated 26.04.2016 in M.V.O.P.No.31 of 2015, on the file of the Chairman, Motor Accidents Claims Tribunal-cum-VII Additional District Judge, Bodhan (for short 'the Tribunal), wherein the said claim application filed by appellant herein seeking compensation was allowed-in-part, awarding compensation of Rs.2,43,761/- with interest at 7.5% per annum from the date of petition.

2. Heard learned counsel for the appellant-claimant and learned counsel for the 2nd respondent-insurance company. None appeared for the 1st respondent-owner of the crime vehicle. Perused the record.

3. Appellant herein filed claim application seeking compensation of Rs.8,00,000/- on account of the injuries sustained by him in a motor vehicle accident that occurred on 03.06.2011. According to the claimant, on that day, he along with others were travelling in a car bearing No.AP 09 UT TR 3818 from

Hyderabad to Bodhan and when they reached near Edlakatta Vagu on the limits of Bhiknoor Police Station at about 06:30 p.m., the driver of the car drove it in a rash and negligent manner with high speed and lost control over it. As a result of which, the car turned turtle and claimant sustained traumatic L3 fracture, Fr. Grade C paraparesis. Immediately, the claimant was shifted to KIMS Hospital, Secunderabad and he was treated as inpatient from 04.06.2011 to 06.06.2011 and surgery of L2-L4 pedicle screw stabilization and laminectomy was done and the claimant incurred Rs.4,00,000/- towards medical expenses. A case was registered against the driver of the car in Cr.No.143 of 2011 by Police, Bhiknoor. According to the claimant, he was hale and healthy prior to the accident and was earning Rs.3,00,000/- per annum by doing agriculture. After the accident, he was unable to move from the bed due to fracture of spinal cord and the doctors advised him not to do any work involving walking, lifting weights, standing, bending and sitting. He was bed ridden for six months and incurred an amount of Rs.60,000/- towards attendant charges. He sustained permanent disability on account of the injuries.

4. The first respondent-owner of the crime vehicle remained *ex parte* before the Tribunal and the second respondent-insurer filed counter opposing the claim and denying its liability to pay the compensation.

5. Based on the above pleadings, the Tribunal settled the following issues for trial:

- “(i) Whether the accident occurred due to rash and negligent driving of driver of Car bearing No. AP 09-UT-TR-3818?
- (ii) Whether the petitioner is entitled for compensation, if so from whom?
- (iii) To what relief?”

6. During the course of trial, P.Ws.1 and 2 were examined and Exs.A1 to A10 were marked on behalf of the claimants and no oral and documentary evidence was adduced on behalf of the respondents.

7. On a consideration of the evidence available on record, the Tribunal held on issue No.1 that the accident occurred due to the rash and negligent driving of the car by its driver. The said finding had become final, as no appeal is preferred by the

respondents questioning the same. On issue No.2, the Tribunal held that the claimant was entitled for a total compensation of Rs.2,43,761/-. Accordingly, an award was passed for the said amount with interest at 7.5% per annum. Dissatisfied with the same, the claimant preferred the present appeal seeking enhancement of compensation.

8. The only question that arises for consideration is – whether the claimant is entitled for the enhancement of compensation amount and if so, to what extent.

9. It is the evidence of the claimant that in the accident he sustained grievous injuries. Immediately after the accident, he was shifted to KIMS Hospital, Secunderabad and he was treated from 04.06.2011 to 06.06.2011 and underwent surgery of L2-L4 pedicle screw stabilization and laminectomy was done. In order to substantiate his contention about the fracture injuries, he examined P.W.2 Dr. A.Krishna Reddy. The doctor in his evidence deposed that he is the Consultant Neurosurgeon at KIMS Hospital and on 04.06.2011, the claimant was admitted in hospital with a history of road traffic accident at Kamareddy on 03.06.2011 while he was

travelling in car which toppled in a canal and with history of loss of consciousness and severe back pain and weakness of both lower limbs. On his examination, the claimant was conscious with weakness of both lower limbs and the MRI revealed traumatic L3 fracture with Fr-grade C paraparesis. For that L2-L4 pedicle screw stabilization and laminectomy was done on 04.06.2011 and the claimant was discharged on 06.06.2011. Exs.A-7 and A-8 were issued from KIMS Hospital. All the scan 4 x-ray are done in their hospital on his advise. Injury to the spine was grievous with significant neurological consequence. The patient was last seen on 15.07.2013. He was still having back pain. There will be some respected activity of bending forward. In cross-examination of P.Ws.1 and 2, nothing material was elicited to disbelieve their testimony. The claimant proved with medical evidence that he sustained fracture injuries stated above and the impact of the said injury, as per the opinion of the doctor, is that the claimant would face difficulty in walking, lifting weights, standing and sitting and bending. The fracture injuries sustained in the spinal cord will naturally have a serious impact on the body.

10. Having regard to the above circumstances, I am of the opinion that the loss of future earnings can be calculated by taking into consideration the disability at 20% on his future income. Though the disability certificate is not filed, but having regard to the nature of grievous injuries sustained by the claimant and the disability he suffered, I am of the view that the same can be considered as 20% for the purpose of calculating the compensation against the injuries sustained by him at Rs.5,000/- per month. 25% increment by way of future prospects on the monthly income comes to Rs.1,250/- ($\text{Rs.5,000/-} \times 25\%$). Thus, the monthly income can be calculated at Rs.6,250/- ($\text{Rs.5,000/-} + \text{Rs.1,250/-}$). Thus, an amount of Rs.1,95,000/- ($\text{Rs.6,250/-} \times 12 \times 13 \times 20/100$) is awarded towards loss of future income.

11. The Tribunal had awarded an amount of Rs.30,000/- towards pain and suffering. It would be just and proper if the same is enhanced to Rs.50,000/-. The Tribunal had awarded Rs.20,000/- towards loss of earnings, Rs.15,000/- towards transportation charges, Rs.5,000/- towards extra nourishment, Rs.1,63,829/- towards medical expenses and Rs.9,932/- towards medicals bills.

The said award of compensation under different heads is hereby confirmed. The total of the above said amounts comes to total of Rs.263,761/- (Rs.50,000/- + Rs.20,000/- + Rs.15,000/- + Rs.5,000/- + Rs.1,63,829/- + Rs.9,932/-) Thus, in all, the claimant is entitled for compensation of Rs.4,58,761/- (Rs.1,95,000/- + Rs.2,63,761/-). The award is modified accordingly.

12. In the result, the appeal is allowed-in-part, enhancing the compensation from Rs.2,43,761/- Rs.4,58,761/-. The enhanced amount shall carry interest at 7.5% p.a. from the date of award passed by the Tribunal i.e., 26.04.2015 till realization, payable by respondent Nos.1 and 2 jointly and severally. There shall be no order as to costs.

13. Pending miscellaneous petitions, if any, stand closed.

A.SANTHOSH REDDY, J

07.11.2022
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