THE HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

MA.CMA.NO.2638 OF 2014

JUDGMENT

Assailing the order and decree dated 06.09.2012 passed by the court of the Chairman, Motor Accidents Claims Tribunal (II Additional District Judge) Nalgonda at Suryapet in O.P.No.201 of 2009, the claimant, who is the injured, filed the present appeal seeking enhancement of compensation granted by the Tribunal.

2. The case of the claimant is that on 21.04.2008 while the claimant along with one Marripeddi Lachaiah went to Raingudem village on their Hero Honda Motor Cycle bearing No. AP 24 B 8179 on personal work, and while they were returning, at about 4.00 p.m., when they reached near Sri Venkateshwara Engineering College, Suryapet on N.H.No.9, the driver of Scorpio Jeep bearing No. AP 9 X 4633, driven by its driver in a rash and negligent manner, coming from Hyderabad side, dashed the said motor cycle coming in opposite direction, and as a result, the claimant, who was a pillion rider, fell down on the road and sustained injuries and deformity of right thigh and immediately, he was shifted to Area Hospital, Suryapet, and from there he was shifted to Kamineni Hospital at L.B. Nagar, Hyderabad and that he spent huge amounts towards treatment, medicines and transportation charges etc. Because of the accident, he sustained severe fracture injuries and sustained permanent disability and that he is not in a position to attend to his normal work. Case in Cr.No.113/2008 was registered against the driver of the Scorpio Jeep bearing No. AP 9 X 4633.

3. The further case of the claimant is that he was aged 40 years as on the date of the accident and was hale and healthy and earning an amount of Rs.5,000/- per month by doing business in selling fish and was contributing the entire earnings to the

family. With these averments he filed claim petition under Section 166 of the Motor Vehicles Act, 1988 and Rule 455 of the A. P. Motor Vehicles Rules, 1989, claiming compensation of Rs.2,50,000/-.

4. Respondents 1 and 2, who are driver and the owner filed counter affidavits denying the manner of accident pleaded by the claimant and also disputing the claim, sought for dismissal. Respondent No.3 which is the insurer of the crime vehicle also filed counter affidavit denying the manner of accident, injuries alleged to have been sustained by the claimant, age, avocation and income of the deceased and contending that the compensation claimed is excessive, sought for dismissal of the claim petition.

5. The Tribunal considering the evidence of P.W.1, who is the injured, and Exs.A-1 and A-4, which are the FIR and charge sheet respectively, held that the accident occurred due to rash and negligent driving of the driver of the crime vehicle and that the claimant sustained injuries in the said accident.

6. Tribunal taking the monthly income of the claimant as Rs.3,000/-, and as the age of the deceased is 40 years, applied the multiplier of 15, arrived at Rs.5,40,000/- and as per Ex.A-5 disability certificate the claimant sustained 46% disability, arrived at Rs.2,48,400/-, but as the claimant claimed only an amount of Rs.1,00,000/- under this head, awarded the said amount towards permanent disability. The Tribunal further granted an amount of Rs.12,000/- towards transportation charges, Rs.9,000/- towards loss of earnings, Rs.9,000/- towards partial loss of earnings, Rs.50,000/- towards medical expenses, Rs.15,000/- towards pain and suffering, and thus in all granted an amount of Rs.1,86,000/- with interest at the rate of 6% from the date of the claim petition till date of realization. As the policy of the

crime vehicle was in force, Tribunal made all the three respondents jointly and severally liable to pay the compensation.

7. Learned counsel for the claimant submitted that the claimant was earning an amount of Rs.5,000/-, but the Tribunal has taken his monthly income only as Rs.3,000/-. He submits that the Tribunal has not granted any future prospects and the interest granted was only 6%, whereas, this court as well as Apex Court have been granting interest at the rate of 7% and hence the same requires to be modified. He further submits that though the Tribunal arrived at Rs.2,48,400/-, under the head of permanent disability, restricted the amount to Rs.1,00,000/- as per claim. He submits that it is well settled that if the claimant is found to be entitled to more compensation than claimed, the same shall be awarded, and need not be restricted to the claimed amount. With these averments, he sought to enhance the compensation granted by the Tribunal.

8. Heard Sri Srinivas Mallampalli, learned counsel for respondents 1 and 2 and Sri N.Mohan Krishna, learned counsel for the 3rd respondent – insurance company. Learned counsel appearing for the respondents supporting the impugned order, sought for dismissal of the claim petition.

9. In the present case there is no dispute that the accident occurred due to rash and negligent driving of the driver of the crime vehicle and that the claimant sustained injuries in the said accident and the dispute is only with regard to quantum.

10. The case of the claimant is that because of the accident, he sustained fracture of right hip and became permanently disabled and he also filed Ex.A-5 disability certificate issued by District Medical Board, Nalgonda. To prove the

disability the claimant examined P.W.2 – Dr. P.Sugnaneshwar, who is one of the signatory to Ex.A-5. He deposed that the claimant attended before the District Medical Board on 22.11.2011 and obtained physically handicapped certificate. No evidence was led on behalf of the respondents to rebut the same. Thus, as per Ex.A-5, the claimant sustained disability of 46%.

11. The case of the claimant is that he was aged 40 years at the time of accident, and earning an amount of Rs.5,000/- per month by doing business in sale of fish. But he has not adduced any documentary evidence. In these circumstances, as per the judgment of the Apex Court in ***RAMACHANDRAPPA v. THE MANAGER, ROYAL SUNDARAM ALIANCE INSURANCE COMPANY LIMITED***[1]**,** I am inclined to take Rs.4,500/- as the monthly income of the deceased, and the amount of Rs.3,000/- taken by the Tribunal is very meager and the same is accordingly modified.

12. As per the evidence on record, the claimant is found to be aged 40 years, and hence as per the judgment of the Apex Court in NATIONAL INSURANCE CO. LTD. V. PRANAY SETHI[2] an addition of 40% has to be made to the established income of the deceased. 40% of Rs.4,500/- comes to 1,800/-. Thus the monthly income of the claimant including future prospects comes to Rs.6,300/- and Rs.75,600/- per annum. The appropriate multiplier to the age group of the deceased '15'. Thus the loss of earnings comes to Rs.11,34,000/- (Rs.75,600/- x 15 = Rs.11,34,000/-). As per Ex.A-5, the claimant sustained 46% disability. 46% of Rs.11,34,000/- comes to Rs.4,53,600/-. Thus the claimant is granted an amount of Rs.4,53,600/- towards loss of earnings due to permanent disability.

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[1] AIR 2011 SC 2951
[2] (2017)16 SCC 680

13. Immediately after the accident the claimant sustained fracture to his right hip and he was shifted to Area Hospital, Suryapet and from there to Kamineni Hospital at L.B. Nagar, Hyderabad and because of the accident he sustained 46% disability and has undergone lot of pain and suffering. Under this head, the amount of Rs.15,000/- granted by the Tribunal is very meager, hence the same is enhanced to Rs.50,000/-. Similarly for transport charges, the Tribunal has granted Rs.12,000/- and the same is enhanced to Rs.20,000/-. For medical expenses, the amount of Rs.50,000/- granted by the Tribunal is confirmed. Considering the nature of injry and treatment taken by the claimant, the claimant is also granted an amount of Rs.25,000/- towards extra nourishment. Since this court granted amount towards loss of earnings due to permanent disability, hence there is no requirement to grant any amount under the heads of 'loss of earnings during treatment period' and 'partial loss of earnings', and the amount granted by the Tribunal under these heads is set aside.

14. Thus, in all, the claimant is granted the following amounts:

1. Loss of earnings due to permanent disability of 46%	-- Rs.	4,53,600 – 00
2. Medical expenses	-- Rs.	50,000 – 00
3. Pain and suffering	-- Rs.	50,000 – 00
4. Transport charges	-- Rs.	20,000 – 00
5. Extra nourishment	-- Rs.	25,000 – 00
	Rs.	5,98,600 – 00

15. The total compensation is rounded off to Rs.6,00,000/-. In view of the above discussion, the amount of Rs.1,86,000/- granted by the Tribunal is enhanced to Rs.6,00,000/-. The interest granted by the Tribunal at 6% is enhanced to 7.5.% per annum. Thus the claimants are entitled to interest at the rate of 7.5 per cent per annum from the date of the claim petition till the date of realization.

16. The claimant claimed only an amount of Rs.2,50,000/-, but this court found that Rs.6,00,000/- is the just compensation. The Apex in ***Laxman @ Laxman Mourya Vs. Divisional Manager, Oriental Insurance Company Limited and another***[3], while referring to the decision in ***Nagappa Vs. Gurudayal Singh***[4] held as under:

> *"It is true that in the petition filed by him under Section 166 of the Act, the appellant had claimed compensation of Rs.5,00,000/- only, but as held in Nagappa vs. Gurudayal Singh (2003) 2 SCC 274, in the absence of any bar in the Act, the Tribunal and for that reason any competent Court is entitled to award higher compensation to the victim of an accident."*

17. In view of the above judgment, this court is justified in granting more compensation than claimed, as it is found to be the just compensation.

18. The claimant shall pay the deficit court fee. Any amount already deposited by the insurance company shall be given credit to.

19. On such deposit of the amount, the claimant is permitted to withdraw the same.

20. The appeal is accordingly allowed to the extent indicated above.

21. Interlocutory Applications pending, if any, shall stand closed. No order as to costs.

M.G.PRIYADARSINI,J

DATE:08—09—2022
AVS

[3] (2011) 10 SCC 756
[4] 2003 ACJ 12 (SC)