

HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A. No. 3848 of 2014

JUDGMENT:

Not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal-cum-XXII Additional Chief Judge, City Criminal Court, Hyderabad, in O.P. No. 1164 of 2010, dated 16.05.2013, the present appeal is filed by the claimant seeking enhancement of compensation.

2. According to the petitioner, on 18.03.2010 at about 8: 30 a.m., when the petitioner was crossing the road opposite to Ramalayam Temple, Kukatpally, at that time, a bus bearing No. KA.04.A.5304 being driven by its driver came in rash and negligent manner with high speed and dashed her, as a result of which, she sustained fracture of left pelvic both rami, fracture of left renal upper pole contusion, fracture of L1 spinous process on both bones, crush injury to abdomen and pelvis and blunt injuries all over the body. Immediately she was taken to Prime Hospital, Hyderabad, where she underwent treatment. Thus, she is claiming compensation of Rs.15,50,000/- under various heads.

3. Respondent No.1 filed counter disputing the manner of accident, age, avocation and income of the petitioner. Further it is contended that the bus was insured with respondent No.2 and the policy was in force

from 26.11.2010 to 25.11.2010 and therefore, it is prayed that if any liability is ordered, it may be ordered against the respondent No.2.

4. Respondent No.2 filed counter disputing the manner of accident, age, avocation, income and health condition of the deceased. It is further contended that the claim is highly excessive and petition is devoid of merits and sought for dismissal of the petition.

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

1. *Whether the petitioner sustained injuries in the accident occurred on 18.03.2010 due to rash and negligent driving of the bus bearing No. KA 04 A 5304?*
2. *Whether the petitioner is entitled for compensation, if so, against whom?*
3. *To what relief?*

6. In order to prove the issues, PWs.1 to 3 were examined and Exs.A1 to A14 got marked on behalf of the petitioner. On behalf of respondent No.1 and 2, no witnesses were examined and no exhibit was marked. Ex.X-1 was marked by the Tribunal.

7. Considering the oral and documentary evidence available on record, the Tribunal has awarded an amount of Rs.6,73,500/- towards compensation to the claimant along with proportionate costs and interest

@ 7.5% per annum from the date of petition till the date of deposit against the respondents jointly and severally.

8. Heard the learned counsel for the claimant and the learned Standing Counsel for the respondent No.2-Insurance Company. Perused the material available on record.

9. The learned counsel for the claimant has submitted that although the claimant established the fact that the accident occurred due to the rash and negligent driving of the driver of the bus and she sustained permanent disability due to the injuries sustained by her in the accident, the Tribunal had taken the income of the petitioner at Rs.8,000/- per month, but did not consider the future prospects and awarded very meager amount under various heads.

10. The learned Standing Counsel appearing on behalf of second respondent-Insurance Company sought to sustain the impugned award of the Tribunal contending that considering the manner of accident and the nature of injuries sustained by the petitioner, the learned Tribunal has awarded reasonable compensation and the same needs no interference by this Court.

11. With regard to the manner of accident, after evaluating the evidence of PW-1 coupled with documentary evidence available on

record and as there is no rebuttal evidence on behalf of the respondent No.2-Insurance Company, the Tribunal rightly held that the accident occurred due to the rash and negligent driving of the driver of bus.

12. Coming to the quantum of compensation, the evidence of petitioner/PW-1 coupled with Ex.A3 Medico Legal Record and Ex.A4 discharge summary issued by Prime Hospital shows that she sustained 1) RTA crush injury abdomen and pelvis, 2) Left pelvic fracture (both rami), 3) Left renal upper pole contusion and 4) Fracture of L1 spinous process on both bones. After the accident, she was shifted to Prime Hospital and she was inpatient from 18.3.2010 to 29.3.2010 and that on 20.3.2010 she underwent operation. Subsequently she took treatment with Dr.V.K.V.Prasad. Dr.V.K.V. Prasad, Orthopedic Surgeon in Sai Specialty Clinic, Secunderabad was examined as PW-2. He deposed that he found tenderness over back, pubic rami, decreasing sensation in both legs and decreased movements in the spine. He issued Ex.A6 certificate showing limb disability of 35% and 80% of loss of earnings. Aggrieved by the said certificate, on petition filed by the respondent No.2, the petitioner was referred to the Board constituted by the Superintendent, Osmania General Hospital, where his disability was assessed as 30% permanent disability on account of lumber disc dislocation of L1 and L2 thereby restriction of spine movement and there shall be painful in left

hip movement and unable to squat. PW-3 who is the Billing Manager, Prime Hospital deposed that Ex.A9 is the final bill for Rs.1,12,472/- and Ex.A4 is the discharge summary of PW-1. Therefore, considering the nature of injuries sustained by the petitioner and the expenditure incurred by him, the Tribunal rightly awarded an amount of **Rs.1,12,500/-** towards medical expenses and **Rs.24,000/-** towards loss of earnings for three months @ Rs.8,000/-, **Rs.50,000/-** towards non-pecuniary loss and **Rs.50,000/-** towards loss of marital prospectus, which are not disturbed. Further an amount of **Rs.1,00,000/-** is awarded for four grievous injuries @ Rs.25,000/- per each grievous injury and **Rs.25,000/-** is awarded towards extra nourishment, attendant and transport charges.

13. Coming to the disability sustained by the petitioner, as stated above, the Board constituted by the Superintendent, Osmania General Hospital, the disability of the petitioner was assessed as 30% permanent disability. According to the petitioner, she was working as Junior Lecturer in Narayana College, Kukatpally and was earning Rs.8,000/- per month. Therefore, considering the avocation of the petitioner and as the accident took place in the year 2011, this Court is inclined to fix the income of the appellant at Rs.8,000/- per month. However, the Tribunal considered the disability at 25% instead of 30% and did not consider the future prospectus.

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 23 years at the time of the accident, she is entitled the future prospects at 40%.

16. Therefore, by adding 40% future prospects, the monthly income of the appellant comes to Rs.8,000/- (Rs.8,000/- + Rs.3,200/-). In view of the judgment of *Sarla Verma Vs. Delhi Transport Corporation*¹, the suitable multiplier to be adopted for calculating the loss of earnings would be '18'. Therefore, the loss of earnings on account of the disability would be Rs.11,200/- x 12 x 18 x 30/100 = **Rs.7,25,760/-**.

17. Accordingly, the appeal is allowed by enhancing the compensation from Rs.6,73,500/- to **Rs.10,87,260/-**. The enhanced amount shall carry interest at 7.5% p.a. from the date of petition till the date of realization. The respondent No.2 is directed to deposit the said amount within one month from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the entire compensation amount. The petitioner is not entitled for the interest during the delay period. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE M.G. PRIYADARSINI

30.12.2022

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¹ 2009 ACJ 1298