

THE HONOURABLE SRI JUSTICE A.SANTHOSH REDDY

M.A.C.M.A.No.2402 OF 2016

JUDGMENT:

This appeal is directed against the award dated 08.01.2016 in M.V.O.P.No.1570 2011, on the file of the XIII Additional Chief Judge (FTC), City Civil Court, Hyderabad (for short 'the Tribunal'), wherein the said claim application filed by the appellant herein seeking compensation, was allowed, awarding compensation of Rs.2,85,000/- with interest at 9% per annum from the date of petition.

2. Heard learned counsel for the appellant-claimant and learned counsel for second respondent-insurer. None appeared for the first respondent. Perused the record.

3. The appellant herein filed claim application seeking compensation of Rs.6 lakhs for the injuries sustained by him in a motor vehicle accident that occurred on the intervening night of 19/20.03.2011 at about 12:15 p.m. According to the claimant, while he was proceeding on his motorcycle bearing No AP-23-M-6464 from Toopran towards Kompally to his in-laws house and

when he reached near Toopron tollgate, at that time one Tata Indica Car bearing No.AP-29 AL-8880, came from the wrong side and dashed the claimant from behind, while overtaking another vehicle, due to which, the claimant fell down from the bike and received fractures and injuries on various parts of the body. The claimant was shifted to Axon Hospital, Hyderabad where the authorities advised the attendants of the claimant to shift him to another hospital due to shortage of beds and immediately he was shifted to Remedy Hospitals, Kukatpally, Hyderabad. Police, Toopran registered a case in Cr.No.59 of 2011 for the offence punishable under Section 337 IPC against the driver of the Tata Indica car. It is pleaded by the claimant that prior to the accident, he was hale and healthy, aged 27 years, and was doing cell phone business i.e., selling cell phones, SIM cards and running servicing centre at Toopran and used to earn Rs.30,000/- per month and after the accident, he closed the business as he sustained loss of income and incurred substantial medical expenditure.

4. The first respondent-owner of the car remained *ex parte* before the Tribunal. The second respondent-insurer filed counter

opposing the claim and denying its liability to pay the compensation.

5. On a consideration of the evidence available on record, the Tribunal held that the accident occurred due to the rash and negligent driving of the Tata Indica car by its driver. The said finding had become final, as no appeal is preferred by the respondents questioning the same. The Tribunal further held that the claimant is entitled for a total compensation of Rs.2,85,000/-. Accordingly, an award was passed for the said amount with interest 9% per annum from the date of petition till realization. Not satisfied with the award of compensation, the appellant-claimant filed the present appeal seeking enhancement of compensation.

6. Learned counsel for the claimant submits that the claimant suffered 50% partial permanent disability and having regard to the same, the loss of earnings have to be assessed by taking into consideration the income of the claimant at Rs.10,000/- per month and award compensation accordingly. In support of his contentions and submission, learned counsel placed reliance on the

decisions of the Hon'ble Apex Court in **RAJ KUMAR v. AJAY KUMAR AND ANOTHER**¹, **SYED SADIQ AND OTHERS v. DIVISIONAL MANAGER, UNITED INIDA INSURANCE COMPANY LIMITED**², **NEW INDIA ASSURANCE COMPANY LIMITED v. GAJENDER YADAV AND OTHERS**³ and of this court in **CHARAN SIGH v. G.VITTAL REDDY**⁴ and **SYED SALEEM v. ABDUL SHUKUR AND ANOTHER**⁵.

7. Learned counsel for the respondent submits that the Tribunal had rightly awarded compensation after taking into consideration the material on record and the same warrants no interference.

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

9. The claimant sustained fracture injuries i.e., closed comminuted shaft right femur, Grade III A compound comminuted

¹ (2011) 1 SCC 343

² (2014) 2 SCC 735

³ (2018) 11 SCC 630

⁴ 2003(1) AWR 741

⁵ 2007(1) ALD 382

fracture of right calcaneal tuberosity and other multiple injuries all over the body. The claimant was treated for fracture injuries, wound debridement was done, operation was conducted, nails were inserted to right femur, skin grafting was also done and after discharge, he is still continuing the treatment. Owing to the injuries and fractures, the claimant sustained 50% partial and permanent disability. The claimant cannot walk properly due to shortening of his right leg and there is limping and is facing difficulty to attend day-to-day works. However, P.W.4, Dr.Ch.Sulapani, Orthopaedic Surgeon in Rajya Lakshmi Hospital, deposed that he verified the record of the claimant and found fractures 1 to 4. He also issued Ex.A-16 disability certificate stating that the disability is 50% partial and permanent in nature. P.W.4 further deposed that the claimant would face difficulty in sitting, squatting and walking and he suffered shortening of the right lower limb by one inch and stiffness of right ankle and right knee. The Tribunal had taken into consideration the evidence of the Doctor who issued Ex.A-16 disability certificate and assessed the disability. When the doctor was cross-examined with reference

to the disability certificate-Ex.A-16, he stated that he issued the same after verifying the previous medical record of the claimant. The evidence of the claimant, supported by the evidence of P.W.4, the doctor, proved that the claimant suffered 50% disability, which is partial and permanent in nature.

10. In ***Raj Kumar***'s case, the Hon'ble Apex Court has laid down the principle regarding assessment of future loss of earning capacity due to permanent disability and at para 18 it is held as under:

“The Tribunal should also act with caution, if it proposed to accept the expert evidence of doctors who did not treat the injured but who give ‘ready to use’ disability certificates, without proper medical assessment. There are several instances of unscrupulous doctors who without treating the injured, readily giving liberal disability certificates to help the claimants. But where the disability certificates are given by duly constituted Medical Boards, they may be accepted subject to evidence regarding the genuineness of such certificates. The Tribunal may invariably make it a point to require the evidence of the Doctor who treated the injured or who assessed the permanent disability. Mere production of a disability certificate or discharge certificate will not be proof of the extent of disability stated therein unless the Doctor who treated the claimant or who medically examined

and assessed the extent of disability of claimant, is tendered for cross- examination with reference to the certificate. If the Tribunal is not satisfied with the medical evidence produced by the claimant, it can constitute a Medical Board (from a panel maintained by it in consultation with reputed local Hospitals/Medical Colleges) and refer the claimant to such Medical Board for assessment of the disability".

11. In the instant case, it is in the evident of the claimant that he suffered 50% which partial and permanent in nature, but the Tribunal has not specifically recorded as to the extent of functional disability suffered by the claimant. Considering the evidence of doctor-P.W.4, who after verifying the previous medical record issued Ex.A-16 disability certificate and in his evidence deposed that the disability sustained by the claimant is 50% partial and permanent in nature and the principles laid down by the Apex Court in the above decision, the claimant has proved that he suffered partial and permanent disability as a result of which he cannot fold his leg and facing difficulty in attending calls of nature and also there is limping in his walking. The claimant was into the business of cell phones and he was active in his business and after the accident, he was unable to perform his business properly.

The disability certificate Ex.A-16 clearly shows that there is no specific finding on amputation, but, however, the claimant stated in his evidence that there is shortening of leg and the same appears to be not true. Owing to the fracture injury sustained by the claimant, there is certainly some difficulty. As such considering the evidence of the claimant and doctor-P.W.4 and the medical record, the functional disability of the claimant can be assessed at 20%. The claimant stated that he was doing business in cell phones in the name and style 'Sri Ganapathi Mobiles and Electronics' and used to earn Rs.20,000/- to Rs.30,000/- per month, but there is no satisfactory oral and documentary evidence about the actual income earned by the claimant. In order to prove his monthly income, the claimant filed Ex.A-12 business licence issued by Gram Panchayat, Toopran along with receipt which shows that the claimant is running a mobile shop. Except that, there is other proof to show what was the actual income earned by the claimant out of the said business in order to prove his monthly income. Based on Ex.A-12, the monthly income cannot be assessed, as claimed. However, considering the oral and documentary evidence

produced by the claimant, it would be proper to fix the monthly income of the claimant at Rs.6,000/- per month. Further, considering that the claimant was aged 27 years at the time of accident, the multiplier applicable to his age group, as per the decision of the Hon'ble Apex Court in **SARLA VARMA v. DELHI TRANSPORT CORPORATION**⁶ is '17'. The claimant is also entitled to 50% increment by way of future prospects towards loss of income. Therefore, the claimant is entitled to a total compensation of Rs.3,67,200/- $[(Rs.6000 \times 20/100 + 50/100 \times 20/100 \times Rs.6000) \times 12 \times 17]$ under the head of loss of future income. The Tribunal awarded Rs.80,000/- towards medical bills, Rs.35,000/- towards removal of implants, Rs.70,000/- towards injuries, Rs.10,000/- towards pain and suffering and mental agony, Rs.40,000/- towards extra nourishment, travelling and attendant charges and Rs.50,000/- towards loss of earnings. As this court has calculated the compensation under head of loss of future income, the amount of Rs.50,000/- awarded by the Tribunal towards loss of earnings is set aside. If that is so, the compensation awarded by the

⁶2009(6) SCC 121

Tribunal under different heads comes to of Rs.2,35,000/- (Rs.80,000/- + Rs.35,000/- + Rs.70,000/- + Rs.10,000/- + Rs.40,000/-). The said amount awarded by the Tribunal under different heads is just and reasonable and they are hereby confirmed. Thus, in all, the claimant is entitled for a total compensation of Rs.6,02,200/- (Rs.3,67,200/- + Rs.2,35,000/-). Further, the Tribunal granted interest at 9% from the date of petition, which is considered excessive.

12. In the result, the appeal is allowed. The award of the Tribunal is modified by enhancing the compensation from Rs.2,85,000/- to Rs.6,02,200/- and reducing the rate of interest from 9% to 7.5% p.a., from the date of petition till realization payable by respondents 1 and 2 jointly and severally. There shall be no order as to costs.

13. Pending miscellaneous applications, if any, shall stand closed.

A.SANTHOSH REDDY, J

02.11.2022

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