

THE HONOURABLE SRI JUSTICE A.SANTHOSH REDDY

M.A.C.M.A.No.953 OF 2016

JUDGMENT:

This appeal is directed against the award dated 28.03.2013 in M.V.O.P.No.1698 2002, on the file of the IX-Additional Chief Judge (FTC), City Civil Court, Hyderabad (for short 'the Tribunal'), wherein the said claim application filed by the first respondent herein seeking compensation, was allowed, awarding compensation of Rs.6,84,000/- with interest at 7% per annum from the date of petition.

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

3. The first respondent-claimant filed claim application seeking compensation of Rs.1,50,000/- for the injuries sustained by him in a motor vehicle accident that occurred on 17.05.2002 at about 10:15 p.m. According to the claimant, on that day, while he was proceeding on his Kinetic Honda bearing No.AP 9 AA 9931, a Tata Indica car bearing No.DL 09 CA 6092, driven by its driver in

a rash and negligent manner dashed his kinetic Honda. As a result, he fell down and sustained fracture of right tibia, head injury, laceration of both hands, injuries to cervical spine, chest, besides other multiple injuries all over his body. He was shifted to Apollo Hospital and was admitted as inpatient. The claimant was aged 40 years at the time of accident and was an employee of Punjab and Sind Bank, drawing a salary of Rs.16,000/- per month. He spent considerable amounts towards medical expenses, besides other amounts and suffered pain and mental agony. He was unable to walk properly and was limping. Police, Kharkana, Secunderabad registered a case in Cr.No.67 of 2002 against the driver of the car.

4. Respondent No.2-owner of the car remained *ex parte* before the Tribunal. The appellant-insurer filed counter opposing the claim and denying its liability to pay the compensation.

5. Originally, the claim petition filed by the claimant was disposed of by the Tribunal on 23.12.2005 by awarding compensation of Rs.75,000/- with interest at 9% per annum from the date of petition. Not satisfied with the same, the claimant

filed M.A.C.M.A.No.982 of 2006 before this court and by order dated 03.03.2011, this court allowed the appeal and remanded the matter to the Tribunal for deciding the correctness of compensation awarded in favour of the claimant with liberty to both parties to adduce further evidence. Subsequent to remand, the claimant filed amendment petition in I.A.No.962 of 2012 before the Tribunal seeking enhancement of total compensation to Rs.6,05,000/- as against the claim of Rs.1,50,000/-. After amendment, either of the parties failed to adduce oral or documentary evidence and relied on the same evidence adduced before the Tribunal prior to remand.

6. 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 Tribunal further held that the claimant is entitled for a total compensation of Rs.6,84,000/-, which includes the compensation of Rs.75,000/- already awarded by the Tribunal before remand. Accordingly, an award was passed for the said amount with interest 7% per annum from the date of petition till realization. Aggrieved by the said

award of compensation, the present appeal is filed by the appellant-insurer.

7. Learned counsel for the appellant-insurer contends that the Tribunal erred in awarding enhanced compensation on the same oral and documentary evidence, without there being any additional evidence adduced by the claimant, and the compensation awarded by the Tribunal is on higher side. In the disability certificate, it is nowhere mentioned about the shortening of the leg and limping. For the above reasons, the award of the Tribunal may be set aside.

8. Learned counsel for the first respondent-claimant supports the award passed by the Tribunal and submits that there is no error in the award passed by the Tribunal and the appeal is *de void* of merits and prayed to dismiss the same.

9. The question that arises for determination is – whether the award of compensation by the Tribunal is on the higher side warranting interference?

10. The finding of the Tribunal that the accident occurred due to the rash and negligent driving of the car by its driver is not seriously disputed by the appellant-insurer.

11. According to the claimant, he was shifted to Apollo Hospital immediately after the accident and was admitted as inpatient. At the time of admission, he was having bicondylar fracture of right tibia along with head injury and was treated with POP immobilization and was put on neurological observation. According to P.W.2, Dr.S.V.Chandrasekhar Reddy, Orthopaedic Surgeon, Apollo Hospital, who treated the claimant, no surgery was done to the claimant. He certified that the discharge certificate Ex.A-3 was issued by their hospital.

12. The claimant produced disability certificate in Ex.A9 issued by P.W.2. A perusal of the said certificate discloses that the claimant sustained 50% disability, which is permanent and partial. P.W.2 stated that the said certificate was issued on the basis of malunited fractures and secondary osteoarthritis. He also stated that the claimant can neither stand for a long time nor walk for long distances in view of the said disability.

13. The claimant was hale and healthy prior to the accident and was an employee of Punjab and Sind Bank and drawing a gross salary of Rs.16,786.44 Ps and net salary of Rs.14,126.44 Ps.

The Tribunal had computed the income of the claimant by taking his salary at Rs.16,000/- per month and by applying the disability at 50% arrived at the compensation, but strangely awarded compensation of Rs.5,84,000/- towards partial and permanent disability and loss of future earning capacity without any basis. As far as disability of the claimant is concerned, a perusal of the disability certificate-Ex.A-9 reveals that the claimant suffered 50% permanent partial disability and in view of the evidence of P.W.2 that the claimant cannot stand for a long time and cannot walk long distances, it cannot be said that the disability would make him totally lose his employment or that he cannot work as an employee of Punjab and Sind Bank. As such, considering the facts and circumstances of the case, the functional disability of the claimant can be assessed at only 20%. The income of the claimant basing on Ex.A-7 can be considered at Rs.16,000/- per month. After deducting 50% towards personal expenses, the income of the claimant would come to Rs.8,000/- ($\text{Rs.16,000/-} \times 50/100$). By adding additional 50% towards future prospects to the monthly income of the claimant, as per the decision of the Hon'ble Apex

Court in **NATIONAL INSURANCE COMPANY LIMITED v. PRANAY SETHI AND OTHERS**¹, it works out to Rs.4,000/- (Rs.8,000/- x 50/100) and the monthly income of the claimant comes to Rs.12,000/- (Rs.8,000/- + Rs.4,000/-). Considering the age of the as 40 years, the appropriate multiplier, as per the decision of the Hon'ble Court in **SARLA VARMA v. DELHI TRANSPORT CORPORATION**² is '16'. The claimant is, therefore, entitled to a compensation of Rs.6,91,200/- [(Rs.12,000/- x 20/100 + 20/100 x 50/100 x Rs.12,000) x 12 x 16)] under the head of loss of future income.

14. Further, the award of Rs.20,000/- towards medical expenses, Rs.20,000/- towards transportation to hospital, damage to cloths and attendant charges, Rs.15,000/- towards pain and suffering and Rs.10,000/- towards loss of pleasure and amenities of life by the Tribunal is just compensation and warrants no interference and they are hereby confirmed. As this court has calculated the compensation under head of loss of future income, the amount of Rs.35,000/- awarded by the Tribunal towards loss of earnings is

¹2017 ACJ 2700

²2009(6) SCC 121

set aside. If that is so, the compensation awarded by the Tribunal under different heads comes to Rs.65,000/- (Rs.20,000/-, Rs.20,000/-, Rs.15,000/-, Rs.10,000/-). Thus, in all, the claimant is entitled for a total compensation of Rs.7,56,200/- (Rs.6,91,200/- + Rs.65,000/-). Since no cross appeal is filed by the claimant, the claimant is entitled for the compensation of Rs.6,84,000/- awarded by the Tribunal.

15. In the result, the appeal is dismissed. There shall be no order as to costs.

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

A.SANTHOSH REDDY, J

03.11.2022
Lrkm