

THE HONOURABLE SRI JUSTICE A.SANTHOSH REDDY

M.A.C.M.A.No.233 OF 2016

JUDGMENT:

This appeal is directed against the award dated 01.10.2015 in M.V.O.P.No.997 of 2008, on the file of the I-Additional District & Sessions Judge, Ranga Reddy District (for short 'the Tribunal), wherein the said claim application filed by the appellant herein seeking compensation was allowed-in-part, awarding Rs.1,25,722/- with interest at 7% per annum from the date of petition.

2. Heard learned counsel for the appellant and learned counsel for the 3rd respondent-insurer. None represented the 1st and 2nd respondents. Perused the material on record.

3. The appellant herein filed claim application seeking compensation of Rs.4 lakhs on account of the injuries sustained by the claimant in a motor vehicle accident that occurred on 27.10.2004 at about 04:00 p.m. According to the claimant, on that day, the claimant, along with other students, was going in college bus bearing No.AP 9T 0577 from Deshmukhi Village to Hyderabad and when they reached near Petrol Pump at

Batasingaram Village, meanwhile the driver of the college bus on observing that a lorry bearing No.AIL 5385 was overtaking a car slowed down the bus and on that the driver of the said lorry came to the extreme left side of the road in a rash and negligent manner and dashed the college bus from right side. Owing to the said incident, the claimant and other students sustained bleeding injuries. The claimant sustained bleeding injuries to her right hand. Police, Hayathnagar registered a case in Cr.No.500 of 2004 against the driver of the lorry. On 27.10.2004, the claimant was admitted in Kamineni Hospital, L.B.Nagar, where she underwent surgeries and she spent huge amounts for treatment, besides other amounts. According to the claimant, she sustained 15% permanent disability to her right elbow.

4. Respondent No.1 herein, who is the driver and respondent No.2, who is owner of the lorry remained *ex parte* before the Tribunal. Respondent No.3-insurer filed separate 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 lorry 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 was entitled for a total compensation of Rs.1,25,722/-. Accordingly, an award was passed for the said amount with interest at 7% per annum. Dissatisfied with the same, the claimant preferred the present appeal.

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

7. The learned counsel for the appellant-claimant would contend that the claimant was a student of B.Tech., first year and her income for the purpose of assessment of disability should be taken into consideration basing on the judgment of a Division Bench of this court in **B.RAMULAMMA v. VENKATESH BUS UNION, LINGARAJAPURAM, BANGALORE AND ANOTHER¹**.

¹ 2009(6) ALD 684 (DB)

8. It is not in dispute that the claimant was a student of first year B.Tech of St.Mary's College of Engineering and Technology, Deshmukhi. As per the date School Secondary Certificate Ex.A-12, her date of birth is 01.08.1987 and was aged about 17 years as on the date of accident. The claimant filed attested copy of B.Tech certificate Ex.A-13 which shows that she was pursuing first year as on the date of accident. As per Ex.A-11 disability certificate, the claimant suffered 15% disability. Admittedly, the claimant is a student of first year B.Tech and it is very difficult to determine the income in case of a student. Guess work becomes inevitable. The decision in ***Ramulamma's*** case (supra) is a guiding factor to award just compensation in case of students. This court in the said judgment at paragraphs 51 and 52 held as under:

"51. In view of the present salaries, being earned by the Computer Engineers, there cannot be any doubt to say that the deceased would have minimum Rs.12,000/- to Rs.15,000/- per month. It has to be seen that now-a-days IV class employees are also getting minimum Rs.7,000/- to Rs. 10,000/- per month depending upon their service. The Junior Assistants are also getting Rs. 12,000/- to Rs. 15,000/- per month. Therefore, considering the normal scales being earned

by the Government employees and also the minimum wage scales fixed to the technical persons, we are of the view that the minimum salary of a technical person, who is holding a bachelor degree in computers or electronics or mechanical, can be taken as Rs.12,000/- per month. Therefore, the income of the graduates in engineering i.e, B.Tech, cannot be fixed less than Rs.12,000/- per month, otherwise it amounts to neglecting the ground of reality. Similarly those who have completed M.Tech, MCA, MBA, the income of such persons can be fixed a little higher i.e., at Rs.15,000/- per month. This will take care of the additional income which they would have earned in course of their service”.

52. In view of the above decision, we are of the considered view that the minimum income of BE graduate can be fixed at Rs.12,000/- per month”.

9. Keeping in view the said judgment, the income of the claimant, who was pursuing her first year B.Tech., at the time of accident, can be fixed at Rs.6,000/- per month instead of Rs.4,500/- per month fixed by the Tribunal. As per the judgment of the Hon’ble Apex Court in **PAPPU DEO YADAV v. NARESH KUMAR AND OTHERS**², the claimant is also entitled for additional 40% on the income towards future prospects, as she is a spinster, aged about 17 years. Applying the same, the income of

² AIR 2020 SC 4424

the claimant can be fixed at Rs.8,400/- (Rs.6,000/- + Rs.2,400/-). Further, the claimant suffered 15% disability which partial and permanent as per the evidence of the doctor P.W.22, coupled with Ex.A-11 disability certificate. P.W.2 further deposed that due to the fracture sustained by the claimant to her right elbow, she will not be able to lift weights and also will not be able to operate computer for long hours. The claimant was aged about 17 years at the time of accident and the relevant multiplier applicable is '18' as per the decision of the Hon'ble Apex Court in **SARLA VARMA v. DELHI TRANSPORT CORPORATION**³. The compensation payable for partial and permanent disability for right elbow, was assessed at 15%. If the same is applied, loss of future earning capacity/income comes to Rs.2,72,160/- (Rs.8,400/- x 12 x 15% x 18). Further, the Tribunal awarded Rs.25,000/- towards grievous injury, Rs.25,000/- towards pain and suffering, Rs.15,000/- towards extra nourishment and transportation, Rs.14,809/- towards hospital expenditure at NIMS, Rs.29,160/- towards disability and Rs.16,753/- towards medical expenditure. The award of the above amounts is just and reasonable and they are hereby confirmed.

³2009(6) SCC 121

Thus, in all, the claimant is entitled for a compensation of Rs.3,97,882/- (Rs.2,72,160/- + Rs.25,000/- + Rs.25,000/- + Rs.15,000/- + Rs.14,809/- + Rs.29,160/- + Rs.16,753/-).

10. On the above conclusions, the appeal is allowed-in-part. The award of the Tribunal is modified by enhancing the compensation from Rs.1,25,722/- to Rs.3,97,882/-. The enhanced amount shall carry interest at 7.5% p.a. from the date of award passed by the Tribunal i.e., 01.10.2008 till the date of realization, payable by respondents 2 and 3 jointly and severally. There shall be no order as to costs.

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

A.SANTHOSH REDDY, J

13.10.2022

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