

THE HONOURABLE SMT. JUSTICE LALITHA KANNEGANTI

M.A.C.M.A.No.3973 of 2008

JUDGMENT:

This appeal is preferred by the claimant aggrieved by the quantum of compensation awarded by the Chairman, Motor Vehicle Accidents Claims Tribunal-cum-IX Addl. Chief Judge (FTS), City Civil Courts, Hyderabad in O.P.No.2442 of 2002 on 28.04.2002.

2. Heard Mr. C. Buchi Reddy, learned counsel appearing for the appellant and Mr. Katta Laxmi Prasad, learned counsel appearing for the respondent/Insurance company.

3. The brief facts are that on 25-02-2002 at about 3pm, the petitioner was travelling in a steering auto bearing No.AP 28U 8155 towards Ibrahimpatnam and at the same time, the lorry bearing No.AP 10T 7848 proceeding in the same direction dashed the auto in the outskirts of Yacharam at St. Paul School, due to which, the cleaner and one minor boy in the auto died on the spot and the petitioner sustained injuries. The petitioner was immediately shifted to Osmania General Hospital and subsequently to Susrutha Hospital and undergone treatment.

4. The respondent/insurance company has filed counter affidavit denying the manner of accident, rash and negligent driving on the part of the driver of the lorry, the nature of injuries, income of the petitioner and the amount claimed by the petitioner.

5. The Tribunal on analyzing the evidence granted compensation of Rs.1,05,500/- with interest @ 9% per annum from the date of petition till the date of deposit.

6. Learned counsel for the appellant/petitioner (for short 'the petitioner') submits that after the accident, immediately, the petitioner was admitted in Osmania General Hospital and took treatment from 25.02.2002 to 27.02.2002 and he sustained fracture of both bones of the left forearm lower third and was discharged at his request and immediately, he joined Susrutha Hospital and treated as inpatient from 28.02.2002 to 28.03.2002 and a surgery was also attended on him on 29.02.2002. He submits that even as per the report of the Doctor, the petitioner has sustained 25% of the disability, however, the Tribunal without considering the said aspect has taken the disability at 10% without any basis. He submits that even under the other heads also, the Tribunal has not granted just and reasonable compensation. He submits that the Tribunal has taken the income of the petitioner @ Rs.1,250/- per month, when it is the specific case of the petitioner that he is drawing an amount of Rs.3,000/- per month. Even for extra nourishment, medical and investigation charges, meager amounts were granted. Further, the Tribunal has failed to add future medicines to be used and the amount that was granted for undergoing surgery to remove the

implant is also meager. He submits that as per the law laid down by the Hon'ble Apex Court in ***Ramachandrappa Vs. Manager, Royal Sundaram Alliance***¹, the Tribunal ought to have taken the monthly income of the petitioner as Rs.4,500/- per month. Therefore, prayed for re-assessment and to award just compensation.

7. Learned counsel for the respondent insurance company submits that when the petitioner himself has pleaded that he is earning an amount of Rs.3,000/-, now, basing on the judgement of Hon'ble Apex Court in ***Ramachandrappa case (stated supra)***, the petitioner is not entitled for Rs.4,500/- per month. Further, it is submitted that the Tribunal has taken all the aspects into consideration and as claimed by the petitioner has granted the amounts under all the heads. It is submitted that though a medical certificate is given basing on the impact of the said injuries or the disability on the working of the petitioner, the Tribunal has taken it as 10% and adopted the multiplier '15'. He submits that the Tribunal has awarded the just and reasonable compensation taking all the factors into consideration. He submits that all the medical bills that were filed by the petitioner were considered and the Tribunal has granted the amount for the same.

¹ (2011) 13 SCC 236

8. In this factual backdrop, the point that arise for determination is whether the compensation awarded by the Tribunal to the petitioner is just and proper.

9. With regard to loss of future earning power is concerned, the Tribunal has granted an amount of Rs.22,500/- taking into consideration the disability of the petitioner @ 10% and multiplier as '15'.

10. The Tribunal has taken into consideration the income of claimant at Rs.1,250/- per month. Even an agricultural coolie earns minimum amount of Rs.100/- per day which comes to Rs.3,000/- per month and hence, in this case, the monthly income of the petitioner can be taken as Rs.3,000/-. When the aspect of multiplier comes, a certificate has been issued by the Medical board assessing the disability of the petitioner @ 25%, but the Tribunal without any discussion has considered it as 10%. On the face of it, it appears that the said conclusion of the Tribunal is without any application of mind. Further, if the age of the petitioner is 45, the correct multiplier to be adopted is 14, whereas the Tribunal has applied the multiplier 15. Hence, this court is of the view that the disability has to be taken @ 25% when there is no other circumstances to dispute the said disability certificate issued by the medical board and as far as the multiplier is concerned, appropriate multiplier for the age of 45 is

'14'. Hence, under the head of loss of future prospects, the petitioner is entitled for Rs.1,26,000/-.

11. The Tribunal though has granted the medical and investigation charges @ Rs.59,458.35/-, failed to consider the Doctor's evidence, wherein the Doctor has suggested for one more surgery for removal of the implant, which costs about Rs.10,000/-, but, however, granted an amount of Rs.6,000/-. Since, the Tribunal has not granted amount for some medical bills and granted meager amount for future surgery, this court is of the view that it is just and proper to grant an amount of Rs.71,800/- under the head of medicines and future surgery.

12. For extra nourishment, the amount that was granted is Rs.5,000/- and even as per the award passed by the Tribunal, the petitioner has taken rest to recover from the said injuries for a period of six months and hence, an amount of Rs.10,000/- would be just and proper for the extra nourishment. As the petitioner could not work for a period of six months, under the head of loss of income, the petitioner is entitled for Rs.18,000/-.

13. Under the head of pain and suffering, the Tribunal has not granted any amount. Hence, under the head of pain and suffering that was undergone by the petitioner for a period of six months, Rs.20,000/- would be appropriate an amount.

14. In addition, the petitioner is entitled for Rs.10,000/- each towards attendant charges and transport charges.

15. In the light of the above mentioned discussion, the appellant is entitled for compensation on the following amounts:

Head	Compensation awarded
(1) Loss of future earnings	Rs.1,26,000
(2) Loss of income for 6 months	Rs.18,000
(3) Medical bills and future surgery	Rs.71,800
(4) Pain and suffering	Rs.20,000
(5) Extra nourishment	Rs.10,000
(6) Attendant benefits	Rs.10,000
(7) Transport charges	Rs.10,000
(8) Total compensation awarded	Rs.2,65,800/-

16. In the result, the Motor Accident Miscellaneous Appeal is allowed enhancing the compensation amount awarded by the Tribunal from Rs.1,05,500/- to Rs.2,65,800/-.

(a) The enhanced amount shall carry interest at 7.5% p.a. from the date of petition till the date of realization.

(b) Appellant shall pay the court fee on the enhanced amount.

(c) The respondent shall deposit the amount into Court within (8) weeks from the date of receipt of copy of the judgment. On such

deposit, the claimant is permitted to withdraw entire amount without furnishing the security.

Pending miscellaneous petitions, if any, shall stand closed.

LALITHA KANNEGANTI, J

Date: 25.01.2023
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