

HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A. No.2822 of 2014

JUDGMENT:

Dissatisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal-cum-X Additional Chief Judge, City Civil Court, Hyderabad, in M.V.O.P. No.497 of 2012, dated 19.06.2013, the present appeal is filed by the claimant seeking enhancement of compensation granted by the Tribunal.

2. Appellant is the petitioner in the main M.V.O.P. According to the petitioner, on 05.11.2011 in the morning hours the petitioner along with his friend were proceeding on bike bearing No.AP 36 AM 1035 from Nagarjuna Sagar to Hyderabad and when they reached near pipes factory at Agapally village, one APSRTC bus bearing No.AP 28 Z 5475 came from opposite direction in rash and negligent and dashed the petitioner's bike, due to which the petitioner and his friend fell down on the road and the petitioner received grievous fracture injury besides fractures. Immediately, he was taken to Osmania General Hospital for treatment and from there he was taken to Smt.Bhagwandeви Hospital, where he was treated as inpatient and rods were inserted in his leg.. He spent Rs.1,00,000/- towards medical expenses. According to the petitioner, he was studying B.Tech 2nd year and earning Rs.4,500/- per month on home tuitions. Due to the injuries sustained by him, he became permanently disabled and lost

his income. Thus, the petitioner is claiming compensation of Rs.4,00,000/- against the respondents 1 and 2 jointly and severally.

3. Respondent Nos.1 and 2 filed counters disputing the manner of accident, nature of injuries sustained by the petitioner, age, avocation and income of the claimant and further contended that the claim is exorbitant and sought for dismissal of the claim petition.

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

1. *Whether the pleaded accident had occurred resulting injuries to the petitioner, K.Durga Prasad due to rash and negligent driving of the APSRTC bus bearing registration No.AP 28Z 5475 by its driver?*
2. *Whether the petitioner is entitled to any compensation, if so, at what quantum and what is the liability of the respondents?*
3. *To what relief?*

5. In order to prove the issues, PWs.1 to 3 were examined and Exs.A1 to A8 got marked on behalf of the petitioner. On behalf of respondent No.1 and 2, no witnesses were examined and no exhibit was marked.

6. On considering the oral and documentary evidence available on record, the Tribunal has awarded an amount of Rs.1,60,000/- towards compensation to the claimant along with costs and interest

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

7. Heard the learned counsel for the appellant-claimant and the learned Standing Counsel for the respondent Nos.1 and 2-APSRTC Corporation. Perused the material available on record.

8. The learned counsel for the appellant-claimant has submitted that although the claimant, by way of evidence of P.Ws.1 to 3 and Exs.A.1 to A.8, established the fact that the petitioner has sustained permanent disability due to the injuries received by him in the accident, but the Tribunal has awarded very meager amount under various heads.

9. The learned Standing Counsel appearing on behalf of respondents-APSRTC corporation 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.

10. Admittedly, there is no dispute with regard to the manner of accident. However, the Tribunal after evaluating the evidence of PWs.1 to 3 coupled with the documentary evidence available on record, held that the accident occurred due to rash and negligent driving of the

driver of APSRTC bus bearing No.AP 28 Z 5475. Now the only dispute in the present appeal is with regard to the quantum of compensation.

11. As per the evidence available on record, the evidence of the claimant/PW-1 coupled with the documentary evidence shows that he sustained grievous injuries in the alleged accident and immediately he was taken to Osmania General Hospital and from there he was shifted to Smt.Bhagwandevi Hospital, where he was treated as inpatient and rods were inserted in his leg. He spent Rs.1,00,000/- towards medical expenses. Further according to the evidence of PW-3, Orthopedic Surgeon in Smt.Bhagwandevi Hospital, PW-1 was admitted in their hospital on 06.11.2011 and was discharged on 11.11.2011 and that he has sustained i) lacerated wound on the forehead, ii) fracture of right ankle bones (Bimalleolus fracture) which are grievous in nature and he was operated on 09.11.2011 and plates were inserted. He further deposed that the said injuries restrict terminal ankle movement making squatting, sitting on the ground difficult and jogging, running, climbing of stairs poses difficulty. He assessed the disability of PW-1 at 25% which is permanent in nature. Considering the evidence of PWs.1 to 3 coupled with documentary evidence, an amount of Rs.50,000/- is awarded to PW-1 for grievous injuries @ Rs.25,000/- for each grievous injury and Rs.20,000/- is also awarded to PW-1 towards pain and suffering, Rs.70,000/- towards medical

expenses. Further the tribunal rightly awarded an amount of Rs.1,60,000/- towards various heads and the same is not disturbed.

12. Coming to the disability sustained by the petitioner, as stated above, PW-2 deposed that PW-1 has sustained 25% permanent disability because of bymallequelor fracture. According to the petitioner, he was aged about 20 years and used to earn Rs.4,500/- per month on home tuitions. But there is no evidence is produced to prove his income. However, considering the avocation of the petitioner and the accident is of the year 2011, his income can be taken as Rs.4,500/- per month. Since the doctor who issued the disability certificate is not a member of the Medical Board, this Court is inclined to fix the disability suffered by the claimant at 15%. As per the records, the claimant was aged about 20 years at the time of accident. Then the appropriate multiplier in light of the judgment of the Apex Court in ***Sarla Verma v. Delhi Transport Corporation***¹ would be “18”. Thus, the future loss of income due to 15% disability comes to Rs.4,500/- x 12 x 18 x 15/100 = **Rs.1,45,800/-**, which the petitioner/claimant is entitled towards loss of income. In total the claimant is entitled to **Rs.3,05,800/-**.

13. In the result, the M.A.C.M.A. is partly allowed by enhancing the compensation amount awarded by the Tribunal from **Rs.1,60,000/-** to **Rs.3,05,800/-**. The enhanced amount shall carry interest at

¹ 2009 ACJ 1298 (SC)

6% p.a. from the date of petition till the date of realization against the respondent Nos.1 and 2 jointly and severally. The amount shall be deposited within a period of one month from the date of receipt of a copy of this order. The claimant shall pay the deficit court fee and on such payment of court fee only, he is entitled to withdraw the compensation amount without furnishing any security. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE M.G. PRIYADARSINI

19.01.2023
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