

HON'BLE SMT. JUSTICE G. ANUPAMA CHAKRAVARTHY

M.A.C.M.A.No.482 of 2008

JUDGMENT :

This appeal is arising out of the orders in O.P.No.842 of 2004, dated 18.12.2006 on the file of Motor Accident Claims Tribunal-cum-District Judge, Nizamabad

2. For the sake of convenience, parties are referred to as arrayed in the O.P.

3. The appellant is the claimant. The O.P. was filed by the claimant under Section 166 of the Motor Vehicles Act, claiming compensation of Rs.8,00,000/- on account of the injuries sustained by the claimant in the accident, which occurred on 19.11.2003. The said accident occurred, while the claimant was walking towards her fields and when she reached at Anthapur Thanda, one tractor bearing No.AP-25-E-6422 driven by its driver in a rash and negligent manner, dashed and ran over both the legs of the claimant and as a result, she sustained multiple fractures to both her legs, deformity and dislocation of right hip, fracture to ribs and other grievous injuries to various parts of her body.

4. Basing on the complaint of the claimant, a case was registered against the driver of the tractor in Crime No.137 of 2003 for the offence punishable under Section 337 of IPC on the file of Varni Police Station. The claimant incurred huge amounts for her medical treatment for other expenses also sustained permanent disability and lost her earning capacity. At the time of accident, the claimant was cultivating the lands doing vegetable and milk business and earned Rs.10,000/- to 12,000/- per month and was aged about 42 years.

5. A detailed counter affidavit was filed by the respondent/Insurance Company disputing the age, income, occupation and also the expenditure incurred by the claimant. Further, it was contended that there was no negligence on the part of the driver of the tractor.

6. The Tribunal, after considering the oral and documentary evidence on record, granted a compensation of Rs.1,80,428/-.

7. Being aggrieved as to the quantum of compensation awarded by the Tribunal, the claimant has filed this appeal for enhancement of compensation. So, the appreciation of evidence would be with respect to the quantum alone.

8. Heard learned counsel for both the parties and perused the record.

9. It is contended by the learned counsel for the claimant that the Tribunal has erred in not considering the income of the claimant as Rs.10,000/- per month and also did not considered the disability and prayed to consider the income and disability while granting compensation and also to grant compensation under other notional heads and prayed to allow the appeal.

10. On the other hand, the learned counsel for the respondent/Insurance Company contended that there is no error or irregularity in the orders passed by the Tribunal so as to interfere with the same and therefore, prayed to dismiss the Appeal confirming the judgment of the Tribunal.

11. On perusal of the entire evidence on record, there is no dispute as to the manner of the accident which occurred on 19.11.2003. Admittedly, the age of the claimant as on the date of the accident was 42 years as per Exs.A-3, A-4 and A-7 i.e., wound certificate, Medico Legal Case register and Medical certificate issued by the Apollo hospital respectively.

12. In the case of **Ramachandrappa v. Royal Sundaram Alliance Insurance Co. Ltd¹**, their lordships have taken the income of the deceased/coolie, as Rs.4,500/- per month. Though, it is contended that the claimant was a vegetable vendor and doing milk business as on the date of the accident, there was no documentary evidence on record to prove the occupation of the claimant as a business woman. Further, the Tribunal did not considered the income of the claimant and granted compensation in lumpsum. Considering the above said proposition, the income of the claimant is fixed as Rs.4,500/- per month for the accident which occurred in the year 2003.

¹ (2011) 13 SCC 236

13. As per the oral evidence of P.W.2 i.e the Doctor and documentary evidence i.e. Ex.A-10/Disability certificate the claimant sustained 40% of permanent disability which can be taken into consideration while calculating the loss of earnings.

14. It is relevant to note that the Tribunal has awarded compensation to the claimant under the following heads:-

1.	Pain and suffering	Rs.50,000/-
2.	Disability	Rs.50,000/-
3.	Future medical expenses	Rs.20,000/-
4.	Medical expenses as per Ex.A-8	Rs.42,428/-
5.	Loss of earning for 6 months	Rs.18,000/-

15. As per the Apex Court judgment in **National Insurance Company Limited vs. Pranay Sethi**², the claimant is entitled for 25% of future prospects as she was aged above 40 years. If 25% of future prospects is added, it would come to Rs.5,625/- (Rs.4,500+1125). As stated supra, the disability of the claimant is 40%. As per the judgment of Hon'ble Supreme Court in **Smt.Sarla Verma v. Delhi Transport Corporation & another**³, the multiplier applicable is '14' for the age group of 40 to 45 years.

² 2017 ACJ 2700

³ (2009) 6 SCC 121

Therefore, the loss of earnings of the injured/claimant would be Rs.3,78,000/- (Rs.5625 X 12 X 14 X 40/100). Apart from that, the claimant is also entitled for compensation under the heads of pain and suffering, transportation, medical expenses and attendant charges, as she sustained grievous injuries and also underwent treatment in the hospital for quite some time, as per the evidence of PWs-1 and 2.

Thus, the claimant is entitled to the compensation under the following heads;

1.	Loss of dependency	Rs.3,78,000/-
2.	Pain and suffering	Rs.50,000/-
3.	Transportation	Rs.20,000/-
4.	Medical expenses as per Ex.A-8	Rs.42,428/-
5.	Attendant charges	Rs.20,000/-
	TOTAL	Rs.5,10,428 /-

16. Accordingly, the appeal is allowed, granting a total compensation of Rs.5,10,428/- to the claimant with costs and interest at the rate of 7.5% per annum from the date of petition till the date of realization, jointly and severally payable by respondent Nos.1 and 2 within two months from the date of receipt of a copy of this order. The claimant is permitted to withdraw the entire

amount of compensation, as the accident occurred in the year 2003.
She is entitled for the said amount only on payment of deficit Court
fee.

Pending miscellaneous applications, if any, shall stand
closed.

G.ANUPAMA CHAKRAVARTHY, J

Date: 04.01.2023
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