

HON'BLE SMT. JUSTICE G. ANUPAMA CHAKRAVARTHY

M.A.C.M.A.No.3124 of 2008

JUDGMENT :

This appeal is filed by the claimant being aggrieved by the order and decree dated 06.06.2008 in O.P.No.1165 of 2006 on the file of Motor Accident Claims Tribunal-cum-II Additional District Judge, Ranga Reddy, for the injuries sustained by the appellant, who has filed claim petition under Section 166 of M.V. Act, for compensation of Rs.10,00,000/- together with interest and costs.

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

3. On 26.06.2006, while the claimant was proceeding on his motorcycle bearing No.AP-29-1423 from Kukatpally to Isnapur and when he reached near ICRISAT at 12.00 noon, the driver of the Lorry bearing No.MH-31-AP-1853 driven it in a rash and negligent manner at high speed and dashed against the motorcycle of the claimant, due to which, the appellant/claimant sustained multiple fractures and grievous injuries and immediately he was

shifted to Sai Durga multi-specialty hospital and later to NIMS hospital.

4. Basing on the complaint, a case was registered against the driver of the Lorry in Crime No.241 of 2006 for the offence punishable under Section 338 of IPC on the file of Ramachandrapuram Police Station. According to the claimant, he used to work as a Sales Executive in Jai Constructions and used to earn Rs.8,000/- per month.

5. A detailed counter was filed by the 2nd respondent/Insurance Company denying the age, occupation, income, medical expenditure incurred and also the liability of the Insurance Company. It is the specific plea of the Insurance Company that the Driver of the Lorry does not have valid driving licence and as such, the Insurance Company is not liable to pay compensation.

6. The Tribunal, on examining the oral and documentary evidence on record, partly allowed the O.P., awarding a total compensation of Rs.2,60,000/- along with costs and interest @ 7.5% per annum from the date of petition till the date of

realization. Seeking enhancement of compensation, the claimant has filed this appeal. As the appeal is with respect to quantum of compensation, the appreciation of evidence would be with respect to it only.

7. Heard both sides and perused the record.

8. The learned Counsel for the appellant-Claimant contended that the Tribunal has erred in granting loss of income only for a period of four months i.e. Rs.32,000/- (for the treatment period) and paid lumpsum amount of Rs.1,98,000/- towards fractures and medical expenses and also granted Rs.30,000/- towards pain and suffering and prayed to enhance the compensation considering the disability sustained by the claimant.

9. On the other hand, the learned counsel for the Insurance Company contended that there is no error or irregularity in the orders passed by the Tribunal and prayed to dismiss the appeal.

10. On perusal of the record, it is evident that the O.P. was filed by the claimant claiming compensation of Rs.10,00,000/- but the

Tribunal has granted a total compensation of Rs.2,60,000/- under the heads stated above.

11. It is relevant to mention that the Tribunal has not considered the disability certificate i.e. Ex.A-7, though it disclose that the claimant sustained 60% of disability and the Doctor who issued the disability certificate, was also examined before the Tribunal. There are catena of judgments of the Hon'ble Apex Court, holding that the Doctor who issued the disability certificate need not be examined and any other Doctor who treated the claimant, can also depose about the disability sustained by the claimant. In the present case, PW-3 is the Doctor who examined PW-1 and issued Ex.A-7/disability certificate, though he did not treat PW-1.

12. The High Court of Andhra Pradesh in **Syed Saleem and others v. Abdul Shukur & another**¹, held that there is no requirement to prove disability by examining the Doctor who treated the victim and to obtain such certificate from the very same Doctor. In the present case, PW-3 is the Doctor who examined the

¹ 2007 (1) ALT 648

claimant and issued Ex.A-7/disability certificate. The cross-examination of PW-3 clearly discloses that the claimant approached him for the purpose of follow-up treatment and he treated the claimant, verified the previous medical records and issued disability certificate i.e. Ex.A-7, assessing the disability to be 60%.

13. As per the judgment of Hon'ble Supreme Court in **National Insurance Co. Ltd. v. Pranay Sethi & others**², the claimant is entitled for future prospects of 40%. If 40% is added to the income of the claimant, it would come to Rs.11,200/- (Rs.8,000 + Rs.3,200). The age of the claimant as on the date of accident was 30 years as per Ex.A-3/Medico legal certificate and Ex.A-10/Driving licence of the claimant. As per the judgment of Hon'ble Supreme Court in **Smt.Sarla Verma v. Delhi Transport Corporation & another**³, the appropriate multiplier would be '17' for the age group of 26 to 30 years. Therefore, the annual income of the claimant would come to Rs.1,34,400/- (Rs.11,200 X 12). If multiplier '17' and disability of 60% are applied to the annual

² 2017 ACJ 2700

³ (2009) 6 SCC 121

income, it would come to Rs.13,70,880/- (Rs.1,34,400 X 17 X 60/100). Though it is contended by the learned counsel for the claimant that the claimant has incurred an amount of Rs.2,85,896/- towards medical expenses, the Tribunal has awarded only Rs.1,98,000/- as the authorities of the hospitals were not examined. Therefore, this Court is of the considered view that there is no error or irregularity in granting Rs.1,98,000/- only towards medical expenses in the absence of oral evidence to prove the contents of the medical bills.

14. Thus, the claimant is entitled for compensation under the following heads:

1.	Loss of earnings including disability	Rs.13,70,880/-
2.	Pain and suffering	Rs.25,000/-
3.	Transportation	Rs.2,000/-
4.	Medical expenses (As granted by the Tribunal)	Rs.1,98,000/-
5.	Extra-nourishment	Rs.5,000/-
6.	Attendant charges	Rs.10,000/-
	TOTAL	Rs.16,10,880 /-

15. In the result, the M.A.C.M.A. is allowed by enhancing the compensation amount awarded by the Tribunal from Rs.2,60,000/-

to Rs.16,10,880/-, with costs and interest at the rate of 7.5% p.a. from the date of petition till the date of realization, payable by the respondents jointly and severally to the claimant 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, on payment of deficit Court fee, as the accident occurred in the year 2006.

Pending miscellaneous applications, if any, shall stand closed.

G.ANUPAMA CHAKRAVARTHY, J

Date: 25.01.2023

ajr