

THE HON'BLE SMT. JUSTICE M.G. PRIYADARSINI

M.A.C.M.A. No. 1965 of 2014

JUDGMENT:

Being not satisfied with the quantum of compensation awarded in the order and decree, dated 01.09.2009 made in O.P.No.584 of 2007 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Ranga Reddy District at L.B.nagar (for short "the Tribunal"), the appellant/claimant preferred the present appeal seeking enhancement of the compensation.

2. Vide aforesaid order, the Tribunal has awarded an amount of Rs.1,58,500/- towards compensation to the appellant-claimant against the respondents herein, who are owner and insurer of the offending vehicle i.e., Lorry Tipper bearing No.AP 13 V 9200, jointly and severally, along with proportionate costs and interest @ 7.5% per annum from the date of filing the petition till realization of the amount for the injuries received by him in a road accident that occurred on 24.03.2007.

3. Heard the learned counsel for the appellant-claimant and the learned Standing Counsel for the respondent

No. 2, Insurance Company. Perused the material available on record.

4. The only contention of the learned counsel for the appellant-claimant is that in order to establish the fact that on account of the injuries suffered by the appellant, he had suffered permanent disability at 25%, the claimant has produced, Ex.A.9, disability certificate, issued by the competent Medical Board. However, the tribunal without there being any valid reason brushed aside the said evidence and did not award the compensation under the head of disability. Therefore, the learned counsel prays to award just and reasonable compensation under the head of disability, duly taking into account the monthly income of the appellant and applying multiplier '18' considering his age as '21' years.

5. The learned Standing Counsel appearing on behalf of respondent No.2 sought to sustain the impugned award contending that although Ex.A9, disability certificate, was produced no person in that connection was examined and even P.W.2, who deposed in this regard, was not the doctor, who treated the claimant and therefore, the

Tribunal has rightly rejected the claim under the head of disability and therefore, there is no reason to interfere with the said findings arrived at by the tribunal.

6. The finding of the Tribunal with regard to the manner in which the accident took place has become final as the same is not challenged either by the owner or insurer of the offending vehicle. Even the learned counsel for the appellant is not disputing the quantum of compensation awarded by the tribunal except the rejection of claim under the head of permanent disability.

7. Therefore, this Court is inclined to consider the aspect whether or not the claimant is entitled for compensation under the head of loss of income due to disability. As seen from the medical record, the claimant had sustained degloving injury on the left leg and lower thigh, a crush injury of left calf apart from other serious injuries. After examining the claimant and considering the nature of injuries sustained by the claimant, the Medical Board, which is competent to certify the disability, has issued Ex.A9, disability certificate, holding that the claimant has sustained 25% permanent disability. In view

of the said disability, the Tribunal ought not to have brushed aside Ex.A9 without there being any contra evidence. Therefore, considering the said disability certificate, this Court is inclined to fix the disability suffered by the claimant at 25%.

8. Insofar as the income of the claimant is concerned, as seen from the record, the claimant is aged 21 years at the time of the accident and he was a B.Com graduate as seen from Exs.A11 and A12. According to the claimant, he was working as Sales Executive in M/s. Sri Chaitanya Agency and was getting a salary of Rs.8,000/- per month and he has produced Ex.A10, salary certificate apart from examining the employer as P.W.3. However, the Tribunal has fixed the income of the claimant at Rs.4,500/- per month holding that no registered proof was produced by P.W.3. However, considering Exs.A10 to A12, coupled with the evidence of P.W.3, this Court is inclined to fix the income of the claimant at Rs.6,000/- per month. Hence, under the head of loss of income due to disability, the claimant is awarded a sum of Rs.3,24,000/- (Rs.6,000 x 12 x 18 x 25/100). The amount of Rs.1,58,500/- awarded by

the tribunal under other heads and the rate of interest awarded thereon are not interfered with. Thus, in all, the claimant is entitled for the total compensation of Rs.4,82,500/-.

9. At this stage, the learned Standing Counsel for the Insurance Company submits that the claimant claimed only a sum of Rs.3,00,000/- as compensation and the quantum of compensation which is now awarded would go beyond the claim made which is impermissible under law.

10. In view of the Judgments of the Apex Court in ***Laxman @ Laxman Mourya Vs. Divisional Manager, Oriental Insurance Company Limited and another¹*** and ***Nagappa Vs. Gurudayal Singh²*** the claimant is entitled to get just compensation even if it is more than the amount what was claimed by the claimant.

11. In the result, the M.A.C.M.A. is allowed enhancing the quantum of compensation awarded by the tribunal from Rs.1,58,500/- to Rs.4,82,500/-. The enhanced amount shall carry interest at the rate of 7.5% per annum

¹ (2011) 10 SCC 756

² 2003 ACJ 12 (SC)

from the date of the petition till the date of realization. The amount shall be deposited within a period of two months from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the said amount. However, the claimant shall pay the deficit court fee on the enhanced compensation. No order as to costs.

Miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.G. PRIYADARSINI

22.02.2023
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