

**HON'BLE SMT. JUSTICE G. ANUPAMA CHAKRAVARTHY**

**M.A.C.M.A.No.4955 of 2008**

**JUDGMENT :**

This appeal is filed by the claimant being aggrieved by the order and decree dated 19.07.2006 in O.P.No.625 of 2003 on the file of Motor Accident Claims Tribunal-cum-Mahila Court-cum-XIX Additional Chief Judge, City Criminal Courts, Hyderabad, for the injuries sustained by the appellant, who has filed claim petition under Section 166 of the Motor Vehicles Act, for a sum of Rs.5,00,000/- together with interest and costs.

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

3. On 27.11.2002 at about 8.00 p.m., when the claimant was proceeding on his scooter along with another person from Balanagar to Pedda Revelli village and when he reached near Reddy Daba in the outskirts of Shadnagar, one Jeep bearing No.AP-22-V-3755 came in opposite direction being driven by its driver, in a rash and negligent manner, at a high speed and dashed against the scooter of the claimant, due to which, the

appellant/claimant sustained injury to his right leg, which was amputated. Further, he sustained fractures and multiple injuries all over the body and was shifted to Osmania Government hospital. The claimant was working as Welder/Tractor Mechanic and used to earn Rs.5,000/- per month. He was aged about 38 years as on the date of accident.

4. A detailed counter was filed by the 2<sup>nd</sup> respondent/Insurance Company denying the age, occupation, income, medical expenditure incurred by the claimant and also the liability of Insurance Company as the driver of the Jeep does not possess valid driving licence as on the date of the accident.

5. The Tribunal, on examining the oral and documentary evidence on record, partly allowed the O.P., awarding a total compensation of Rs.1,96,500/- along with costs and interest @ 7% 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.

6. Heard both sides and perused the record.

7. The learned Counsel for the appellant-Claimant contended that the Tribunal has erred in not considering the income of the claimant as Rs.5,000/- per month and only granted disability of 20% though PW-2 deposed about 40% of disability. It is also contended by the learned counsel for the appellant that the appellant/claimant has incurred Rs.32,803/- towards the medical expenditure as per Ex.A-6. But the Tribunal has not awarded the said amount, and therefore, prayed to enhance the compensation.

8. On the other hand, the learned counsel for the 2<sup>nd</sup> respondent/Insurance Company contended that there is no error or irregularity in the orders passed by the Tribunal and prayed to dismiss the appeal.

9. On perusal of the record, it is evident that the O.P. was filed by the claimant claiming compensation of Rs.5,00,000/-. The Tribunal has awarded compensation towards loss of dependency and future earnings to a tune of Rs.1,96,500/-.

10. It is relevant to mention that the claimant has not filed any disability certificate, and salary certificate to prove the percentage of disability or his income as a Mechanic respectively. Further, the claimant has also not examined any witness to prove that he used to earn Rs.5,000/- per month as a Mechanic, except his self-testimony. Admittedly, PW-2 is the Doctor who deposed before the Tribunal that the claimant's leg was amputated and that the claimant sustained 40% of permanent disability.

11. As per the judgment of Hon'ble Supreme Court in **Smt.Sarla Verma v. Delhi Transport Corporation & another**<sup>1</sup>, their Lordships have held that Rs.100/- per day has to be considered as the income of a non-earning member. If the said proposition is taken into consideration, the income of the claimant has to be considered as Rs.3,000/- per month.

12. The evidence of PW.2/Doctor disclose that the claimant sustained 40% of disability and his right leg was amputated apart from other injuries. Ex.A-6 disclose that the claimant has incurred Rs.32,803/- towards medical expenses. In the absence of

---

<sup>1</sup> (2009) 6 SCC 121

documentary evidence, the Tribunal has considered only 20% of disability, but granted the compensation in lumpsum without making proper calculations. Therefore, there is every necessity to interfere with the orders of the Tribunal.

13. As per the judgment of Hon'ble Supreme Court in **National Insurance Co. Ltd. v. Pranay Sethi & others**<sup>2</sup>, the claimant is entitled for future prospects of 40%. If 40% is added to the income of the claimant, it would come to Rs.4,200/- per month (Rs.3,000 + Rs.1,200). The age of the claimant as on the date of accident was 38 years, which is not disputed. As per the judgment in **Sarla Verma's** case (1 supra), the appropriate multiplier would be '15' for the age group of 36 to 40 years. Therefore, the annual income of the claimant would come to Rs.50,400/- (Rs.4,200 X 12). If multiplier '15' and disability of 40% are applied to the annual income, it would come to Rs.3,02,400/- (Rs.50,400 X 15 X 40/100).

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

---

<sup>2</sup> 2017 ACJ 2700

|    |                                       |                       |
|----|---------------------------------------|-----------------------|
| 1. | Loss of earnings including disability | Rs.3,02,400/-         |
| 2. | Pain and suffering                    | Rs.25,000/-           |
| 3. | Transportation                        | Rs.5,000/-            |
| 4. | Medical expenses (Asper Ex.A-6)       | Rs.30,803/-           |
| 5. | Extra-nourishment                     | Rs.10,000/-           |
| 6. | Attendant charges                     | Rs.5,000/-            |
|    | <b>TOTAL</b>                          | <b>Rs.3,78,203 /-</b> |

15. In the result, the M.A.C.M.A. is allowed by enhancing the compensation amount awarded by the Tribunal from Rs.1,96,500/- to Rs.3,78,203/-, 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, as the accident occurred in the year 2002.

Pending miscellaneous applications, if any, shall stand closed.

**G.ANUPAMA CHAKRAVARTHY, J**

Date: 25.01.2023

ajr