

HONOURABLE JUSTICE M.G. PRIYADARSINI

M.A.C.M.A. No.361 of 2015

JUDGMENT:

Being not satisfied with the quantum of compensation awarded in the award and decree, dated 21.11.2014, passed in O.P.No.2271 of 2008 on the file of the Motor Accident Claims Tribunal-cum-XVIII Additional Chief Judge-cum-IV Additional Metropolitan Sessions Judge, Hyderabad (for short “the Tribunal”), the appellant/claimant preferred the present appeal seeking enhancement of the compensation.

2. The facts, in issue, are as under:

The appellant filed a petition under Section 163-A of the Motor Vehicles Act claiming compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident that occurred on 25.05.2008. According to the appellant, on 25.05.2008, the appellant, along with his friend, Mr. Mr.Jagan, was proceeding on a motorcycle as pillion rider and when they reached near Peeli Darga Kaman at about 10:30 a.m., one Bajaj Pulsar Motorcycle bearing No.AP 11 B 1888, owned by respondent No.1 and insured with respondent No.2, driven by its driver in a rash and negligent manner and dashed the motorcycle on which the appellant was proceeding. As a result, the appellant had sustained fracture of right hip joint, fracture of both bones of

right calf and other injuries all over the body. Immediately after the accident, the appellant was shifted to Osmania General Hospital, Hyderabad, where surgeries were conducted by inserting rods for healing the fracture injuries. It is further stated that prior to the accident, the appellant was hale and healthy and was earning Rs.5,000/- per month by doing mason work and due to the fracture injuries, he is incapacitated to attend the mason work and he lost his income. Therefore, he laid the claim against the respondents, seeking compensation.

3. Considering the claim and the counter filed by respondent No.2, and on evaluation of the evidence, both oral and documentary, the learned Tribunal has partly allowed the O.P. and awarded compensation of Rs.2,50,000/- with interest at 7% per annum. Challenging the quantum of compensation awarded, the present appeal is filed by the appellant/claimant.

4. Heard learned counsel for the appellant and learned Standing Counsel for respondent No.2.

5. Learned counsel for the appellant mainly submits that the quantum of compensation awarded by the Tribunal is on lower side and seeks enhancement of the same. He further submits that the evidence of PW.3 and Ex.A3, Disability Certificate, amply established that the appellant had sustained 40% permanent disability as his right leg was shortened, but the

Tribunal without considering the same, has erroneously taken the disability at 20%. Therefore, it is argued that by taking consideration Ex.A3, disability certificate, and by assessing permanent disability at 40%, just compensation may be awarded.

6. Per contra, the learned Standing Counsel for the Insurance Company submits that the quantum of compensation awarded by the Tribunal is based on evidence and the same needs no interference.

7. 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 vehicle.

8. The short question that arises for consideration is *“whether the compensation awarded by the Tribunal is just and equitable”?*

9. In order to establish her case, the appellant examined herself as PW.1 and the Doctors, who treated him, as P.Ws.2 and 3. In support of the injuries as well as the disability sustained by him, the appellant got marked Ex.A3, disability certificate. As per the evidence of P.W.3 coupled with the documentary evidence i.e., Ex.A3-disability certificate, the appellant has sustained fracture to his right leg and in view of

mal-union of the said fracture, the appellant is unable to walk, sit and squat. P.W.3, an Orthopedic Surgeon, had deposed in his evidence that there is shortening of right lower limb and he assessed the disability at 40%. The main contention of the learned counsel for the appellant is that though P.W.3-the Doctor stated that the claimant has sustained 40% of the disability, the Tribunal has taken 20% disability without there being any valid reason. Therefore, considering the evidence of P.W.3 coupled with Ex.A3, this Court is of the view that the tribunal ought to have taken the disability sustained by the appellant at 40%. Hence, this court is inclined to fix the disability at 40%.

10. As regards the income of the appellant, considering the age and avocation of the appellant, the Tribunal has rightly fixed the income at Rs.5,000/- per month. As the appellant was aged about 22 years at the time of the accident and the claim-petition is filed under Section 163-A of the Motor Vehicles Act, the appropriate multiplier is '17' as per the II Schedule of the Motor Vehicles Act. Therefore, the loss of earnings on account of the disability would be $\text{Rs.5,000/-} \times 12 \times 17 \times 40/100 = \text{Rs.4,08,000/-}$. Further, the amount awarded under the heads of medical expenses i.e., Rs.16,000/-; Rs.5,000/- towards extra nourishment; Rs.5,000/- towards transportation charges; Rs.5,000/- towards damage to clothing and

Rs.20,000/- towards pain and suffering appears to be correct, which needs no interference. Thus, in all the appellant is entitled to a sum of Rs.4,59,000/- as compensation.

11. In the result, the appeal is allowed in part by enhancing the compensation from Rs.2,50,000/- to Rs.4,59,000/-. The enhanced amount shall carry interest at 7.5% p.a. from the date of the filing of the O.P. till the date of realization. The 2nd respondent is directed to deposit the said amount within two months from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the entire compensation amount. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE M.G. PRIYADARSINI

04.01.2023
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DATE: 04-01-2023