

THE HON'BLE JUSTICE M.G. PRIYADARSINI

M.A.C.M.A. No. 3007 of 2019

JUDGMENT:

This appeal is filed by the claimant, injured, aggrieved by the order and decree, dated 23.04.2019 made in M.V.O.P.No. 813 of 2015 on the file of the Motor Accidents Tribunal-cum-III Additional Chief Judge, City Civil Court at Hyderabad (for short, the Tribunal).

For the sake of convenience, hereinafter, the parties are referred to as per their array before the Tribunal.

The claimant filed a petition under Section 166 of the Motor Vehicles Act claiming compensation of Rs.8.00 lakhs towards compensation for the injuries sustained by him in a motor vehicle accident that occurred on 20.11.2014. According to the claimant, on the fateful day, while he was proceeding on his cycle from Asif Nagar to Mehdiapatnam, Meraj X Roads to deliver milk and when he was in front of Milk shop, the offending vehicle i.e. Lifting Crane bearing No. AP 13S 4935, owned by respondent No. 1, insured with respondent No. 2, being driven by its driver in rash and negligent manner, dashed the cycle from behind. Due to the impact, the claimant fell down and sustained grievous injuries. He had taken treatment as inpatient at Owaisi Hospital for a considerable period.

According to him, due to the accident, he was unable to attend his regular works as he sustained permanent disability and therefore, he filed the claim petition against the respondents seeking compensation under different heads.

Before the Tribunal, while the respondent No. 1 remained ex parte, respondent No. 2 contested the claim denying the averments of the claim petition and contended that the amount claimed is excessive and prayed for dismissal of the claim petition.

Considering the claim, counter and the evidence, both oral and documentary brought on record, the tribunal has allowed the O.P. in part awarding a sum of Rs. 6,03,342/- towards compensation. Seeking further enhancement of compensation, the claimant approached this Court with the present appeal.

Heard both sides and perused the material available on record.

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.

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

The main contention advanced by the learned counsel for the appellant-claimant is that the claimant has asserted that he was working in Meraj Dairy Milk, Asifabad and earning Rs.10,000/- per month and has also produced Ex.A.17 salary certificate. Therefore, in the absence of any contra evidence adduced by the respondents, the tribunal ought not to have restricted the income to Rs.6,000/- per month. It is further contended that though the medical record i.e. Ex.A.16, disability certificate, discloses the disability suffered by the claimant at 60%, the tribunal ought not to have restricted the same to 50%. It is further contended that even the amounts granted under the heads of pain & suffering; loss of earnings; transportation, attendant charges and extra nourishment are meagre and need enhancement.

On the other hand, the learned Standing Counsel for the Insurance Company has contended that considering the nature of injuries and length of treatment, the tribunal has adequately

awarded the compensation and therefore, the learned Standing Counsel sought for dismissal of the appeal.

As seen from the record, the claimant has claimed that he was working in Meraj Dairy Milk, Asifnagar and earning Rs.10,000/- per month and has also produced Ex.A.17, salary certificate to that effect. However, in the absence of examining the employer who issued Ex.A.17, the tribunal has rightly fixed the monthly income of the claimant at Rs.6,000/- considering his age as 52 years. As seen from the medical record i.e. Exs.A.5, A.7, A.9, A.10, A.12, A.13 & A.19, the claimant underwent major surgeries. Even the evidence of the doctor, P.W.2, discloses that the three injuries sustained by the claimant are grievous in nature and that there was deformity of right hand and right foot and that there is no proper grip in right hand. Ex.A.16 is the disability issued by Kamineni Hospital, but not by Owaisi Hospital, where the claimant had taken treatment. Therefore, considering Ex.A.16, evidence of P.Ws.2 & 4 and the nature of injuries sustained by the claimant, the tribunal has rightly fixed the disability of the claimant at 50% and considering his age as 52 years, by applying multiplier '11', the tribunal has rightly awarded the sum of Rs.3,96,000/- towards loss on account of disability. Considering the discharge bills i.e.

Exs.A.6, A.8 and Ex.A.11, bunch of medical bills, the tribunal has rightly awarded Rs.1,11,992/-. Further, as the doctor, P.W.4, gave estimation for contractual release for the right hand, the tribunal has rightly awarded Rs.65,350/- towards future operation expenses. However, as rightly contended by the learned counsel for the claimant, though the claimant has established that he was on continuous treatment and was bed ridden for more than six months, the tribunal erred in not awarding amount towards loss of income during the treatment period. Therefore, this Court is inclined to award a sum of Rs.36,000/- under the head of loss of income during treatment period. So also, since the three injuries sustained by the claimant are described as grievous in nature, this Court is inclined to enhance the amount awarded by the tribunal towards pain and suffering from Rs.25,000/- to Rs.50,000/-. Further, the tribunal did not award any amounts under the head of injuries. Hence, under the head of injuries, considering the fact that there are three grievous injuries, this court is inclined to award a sum of Rs.75,000/- under the head of injuries. Lastly, considering the nature of injuries and length of treatment period, the amount of Rs.5,000/- awarded by the tribunal towards transportation charges is enhanced to Rs.25,000/- towards transportation charges, extra nourishment and attendant charges.

Thus, in all, the claimant is granted the compensation of Rs.7,59,342/- as against Rs.6,03,342/- awarded by the tribunal.

In the result, the MACMA is allowed in part enhancing the compensation from Rs. 6,03,342/- to Rs. 7,59,342/-. The enhanced compensation shall carry interest at 7.5% per annum from the date of filing of the O.P. before the tribunal till the date of realization. The respondents are directed to deposit the amount within two months from the date of receipt of a copy of this order. On such deposit, the claimant is entitled to withdraw the said amount. No order as to costs.

Pending Miscellaneous petitions shall stand closed.

JUSTICE M.G. PRIYADARSINI

08.02.2023
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M.A.C.M.A. No. 3007 of 2019

DATE:08-02-2023