THE HONOURABLE SMT JUSTICE LALITHA KANNEGANTI

M.A.C.M.A.No.4108 of 2008

JUDGMENT:

This appeal is preferred by the claimant aggrieved by the award and decree dated 27-01-2007 in O.P.No.1009 of 2005 on the file of the Motor Accident Claims Tribunal-cum-I Additional District Judge, Karimnagar.

2. Heard learned counsel for the appellant-claimant Mr.V.Ram Chandar Rao and learned Standing Counsel for respondent No.2-Insurance Company Mr. Kota Subba Rao and perused the record.

3. The brief facts are that on 06-02-2005, while the claimant was proceeding from Karimnagar to Kothapalli by driving his auto bearing No.AP-15-W-8322 along with the passengers and when it reached the outskirts of Nusthulapoor village at about 3-40 PM, a lorry bearing No.AP-20T-4711 came in opposite direction and dashed against the auto, due to which the claimant and the inmates of the auto have sustained injuries and two passengers died on the spot. Immediately after the accident, claimant was admitted in the Government Hospital, Karimnagar and thereafter referred to MGM Hospital, Warangal, where he was treated as inpatient from 06-02-2005 to 11-02-2005 and thereafter to Rohini Super Speciality Hospital, Hanmakonda, where he took treatment from 11-02-2005 to 21-02-2005 and underwent surgery. He spent an amount of Rs.1,00,000/- towards medical expenses and also spent huge amount for transportation and for his prolonged

treatment. Hence, he is claiming compensation of Rs. 8,00,000/- for the injuries sustained by him in the accident.

4. The respondent-Insurance Company has filed counter denying the manner of accident, rash and negligent driving of the driver of the crime vehicle and the nature of injuries sustained by the claimant including 100% disability and the amount that was spent by him for his treatment. It is stated that the compensation claimed is highly excessive.

5. The Tribunal on analyzing the oral and documentary evidence has granted compensation of Rs.4,85,000/- with interest at 7.5% per annum from the date of petition till the date of deposit.

6. Learned counsel for the appellant-claimant submits that on 06-02-2005, the claimant was met with an accident and initially, he was admitted in the Government Hospital, Karimnagar and from there to MGM Hospital, Warangal, where he was treated as inpatient from 06-02-2005 to 11-02-2005 and thereafter, he was shifted to Rohini Super Specialty Hospital, Hanmakonda, where he took treatment from 11-02-2005 to 21-02-2005 and he underwent surgery for T12 and L2 transpedicular screw fixation and steffee plating on 15-02-2005 and he was discharged with an advise of complete bed rest for one year and for follow up treatment periodically. He submits that the claimant is taking continuous treatment as outpatient from the date of his discharge and he is still taking treatment and using medicines and he spent an amount of Rs.1,00,000/- and he is completely confined to the

wheelchair. Learned counsel submits that the petitioner has spent huge amount for transportation from his village to Rohini Hospital, Hanmakonda, and in spite of taking prolonged treatment, there is no improvement in his condition and he has sustained 100% disability and it will continue throughout his life. He submits that the Tribunal without taking into consideration all these aspects has granted only an amount of Rs.4,85,000/- as compensation. He submits that the claimant was working as auto driver and earning a sum of Rs.6,000/-per month at the time of accident, but the Tribunal has taken only a sum of Rs.1500/-per month on notional basis and also taken the disability at 75% instead of 100%. He further submits that even in case of a daily labourer, as per the judgment of the Apex Court in **Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Company Limited[1],** monthly income has to be taken at Rs.4,500/-per month and the Tribunal has granted meager amount. He submits that even the Tribunal has recorded that the claimant has sustained 100% disability and in case of 100% disability, he has relied on the judgment of the Apex Court in **Master Ayush vs. The Branch Manager, Reliance General Insurance Company Limited[2]** wherein it was held that what is applied for the loss of future earnings, even on the same lines attendant charges have to be given as the claimant is confined to a wheelchair. He submits that even under the other heads also, the Tribunal has granted only meager amount and the claimant has to

[1] (2011) 13 SCC 236
[2] 2022(7) SCC 738

travel from his village to the hospital lifelong and for transportation and also for pain and suffering, the Tribunal has granted meager amounts.

7. Learned Standing Counsel for the respondent-Insurance Company Mr. K. Subba Rao submits that in case of 100% disability, 1/3rd has to be deducted. He has relied on the judgment of the Apex Court in **New India Assurance Company Limited v. Charlie and another**[3] wherein the Apex Court in paragraph No.18 held that in case where the injured has suffered 100%, the logic applicable to a deceased can, in appropriate cases, taking note of all relevant factors be reasonably applied. Relying on the said paragraph, he submits that in case of 100% disability as it is the case of death, 1/3rd has to be deducted towards personal expenses. He has also relied on the judgment of the Apex Court in **Sunil Kumar vs. Ram Singh Gaud and others**[4] and submits that in the said case, in case of 45% disability, the Court has deducted 1/3rd amount and as such in this case also, 1/3rd amount has to be deducted in case of 100% disability.

8. In response to the same, learned counsel for the claimant has relied on the three Bench judgment of the Apex Court in **Pappu Deo Yadav v. Naresh Kumar and others**[5] and submits that in the said judgment, there is a disability of 65% and the Court has not deducted 1/3rd amount towards 65% disability.

[3] 2005(1) Decisions Today (SC) 395
[4] 2008 ACJ 9
[5] 2020(6) ALD 198(SC)

9. In this factual backdrop, the point that arises for determination is whether the compensation awarded by the Tribunal to the claimant is just and proper.

10. A perusal of the order impugned shows that the claimant has sustained 100% disability and he has to take treatment for 12 months. Even it is the case of the claimant that he is the owner-cum-driver of the auto, but the Tribunal has taken into consideration his income on notional basis at Rs.1500/-per month. This Court, by taking into consideration the judgment of the Apex Court in **Ramachandrappa's** case (supra), the income of the claimant can be safely taken at Rs.4,500/- per month and annually it comes to Rs.54,000/- and as the petitioner was aged about 22 years, the multiplier is '18' instead of '17' as applied by the Tribunal and the compensation towards disability comes to Rs.54,000/-X18=9,72,000/- and 40% future prospects i.e., Rs.3,88,000/- is granted to the claimant. For loss of earnings for a period of 12 months, a sum of Rs.54,000/- is granted. As far as the medical expenses are concerned, the Tribunal has granted an amount of Rs.45,519/-, which was claimed by the claimant, and the same is granted. For extra nourishment, the Tribunal has only granted a sum of Rs.10,000/-. As the claimant has taken treatment for one year, a sum of Rs.40,000/- is granted for extra nourishment, for pain and suffering an amount of Rs.40,000/- is granted instead of Rs.25,000/- awarded by the Tribunal. For transportation, the Tribunal has granted only an amount of Rs.5,000/- and the same is enhanced to Rs.50,000/-as the claimant has taken treatment continuously for a period of one year and

still he is roaming around the hospitals. As rightly argued by the learned counsel for the claimant, in view of the ratio laid down by the Apex Court in **Master Ayush's case,** the claimant is entitled for the attendant charges as calculated in respect of loss of future earnings and thus, an amount of Rs.9,72,000/- is granted for attendant charges. For loss of future earnings, a sum of Rs.54,000/- is granted. As far as the compensation that is granted for damages of the auto, reasonable amount of Rs.52,264/- was already granted by the Tribunal. In total, a sum of Rs.26,14,583/- is granted to the claimant for the injuries sustained by him in the accident. This Court is not able to appreciate the argument advanced by the learned counsel for the insurance company that 1/3rd has to be deducted even in case of 100% disability. In the two judgments he has relied on, no such ratio is laid down by the Apex Court.

11. In the light of the above discussion, the appellant-claimant is entitled for compensation under the following heads;

1.	Loss of future earnings due to disability (4,500X40% future prospects=6300x12X18)	--	Rs.13,60,800/-
2.	Medical expenses	--	Rs. 45,519/-
3.	Pain and suffering	--	Rs. 40,000/-
4.	Transportation	--	Rs. 50,000/-
5.	Attendant Benefits (4500x12x18)	--	Rs. 9,72,000/-

6.	Loss of earnings	--	Rs 54,000/-
7.	Damages to the auto	--	Rs. 52,264/-
8.	Extra nourishment	--	Rs 40,000/-
		Total:	Rs.26,14,583/-

12. In the result, the Appeal is allowed enhancing the compensation amount awarded by the Tribunal from Rs.4,85,000/- to Rs.26,14,583/-.

(a) The enhanced amount shall carry interest at 7.5% per annum from the date of petition till the date of realization.

(b) The claimant shall pay the deficit Court fee on the enhanced amount.

(c) The respondent-insurance company shall deposit the compensation within a period of 8 weeks from the date of receipt of a copy of this judgment. On such deposit and on payment of deficit Court fee, the claimant is permitted to withdraw the compensation without furnishing any security.

13. Miscellaneous petitions, if any pending in this appeal shall stand closed.

SMT LALITHA KANNEGANTI, J

2nd February, 2023.
sj