THE HON'BLE JUSTICE M.G. PRIYADARSINI

M.A.C.M.A. No. 1352 of 2015

JUDGMENT:

Being not satisfied with the quantum of compensation awarded by the Chairman, Motor Accident Claims Tribunal-cum-XI Additional District & Sessions Judge, (Fast Track Court), Ranga Reddy District (for short, the Tribunal), in O.P.No.738 of 2011, dated 26.05.2014, the appellant/ claimant has preferred the present appeal seeking enhancement of the compensation.

2. For the sake of convenience, the parties hereinafter are referred to as they are arrayed before the Tribunal.

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

The claimant has filed a petition under Section 166 of the Motor Vehicles Act, 1994, claiming compensation of Rs.15,00,000/- for the injuries sustained by him in a motor vehicle accident occurred on 13.06.2011 at about 7.45 pm. According to the claimant, on 13.06.2011, while he was driving Toyoto Qualis bearing No. AP 9 U 4141 along with his friends and when they reached near Warner Chemical Factory at the outskirts of Laxmakkapally Village, Mulugu Mandal, Warangal District, the driver of Lorry bearing No.MP 33 H 1921, drove it in a rash and negligent manner and while trying to overtake another vehicle, dashed against the Qualis of the claimant, as a result the claimant has sustained grievous injuries. Immediately, he was shifted to nearby Government Hospital, thereafter shifted to BBR Hospital, Balanagar, Hyderabad, and from there he was shifted to NIMS Hospital, where his leg was amputated and he has sustained permanent disability. Thus, the claimant became dependent on others and he has to purchase an artificial leg, which has to be replaced in every three years. He spent considerable amount towards medical expenses, extra nourishment, attendant charges besides loss of income. Therefore, he filed the claim petition against respondent Nos.1 and 2, who are owner and insurer of Lorry bearing No. MP 33 H 1921 respectively, seeking compensation of Rs.15,00,000/- under different heads.

4. Before the Tribunal, while respondent No.1 remained *ex parte*, respondent No.2-Insurance Company has resisted

the claim by filing a counter and contended that as per the record of NIMS Hospital, where the claimant was treated, it is mentioned that the claimant was driving two wheeler at the time of accident. It is contended that the driver of lorry has no valid driving licence and the claimant has to prove the manner of accident, nature of injuries, expenses incurred and the disability sustained by him. It is also contended that the compensation claimed is highly excessive and prayed to dismiss the claim petition.

5. Considering the averments in the claim petition and the counter and both the oral and documentary evidence brought on record, the Tribunal has allowed the O.P. in part awarding compensation of Rs.11,47,000/- with costs and interest at 9% per annum from the date of the petition till the date of realization, against respondent Nos.1 and 2 jointly and severally, to the claimant for the injuries sustained by him in the road accident. Seeking further enhancement of compensation, the claimant has approached this Court with the present appeal.

6. Heard both sides and perused the material available on record.

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 in this appeal is "*whether the compensation awarded by the Tribunal is just and equitable*"?

9. The only contention advanced by the learned counsel for the appellant-claimant is that in order to establish the fact that on account of injuries sustained by the claimant in the accident he has suffered permanent disability at 70% due to amputation of his leg, he has produced Ex.A-12-Disability Certificate issued by the NIMS Hospital, Hyderabad, and the same was substantiated with the evidence of PW-2- Doctor, who has categorically deposed that the claimant has sustained 70% disability. He further submits that though the claimant was working as Driver, the Tribunal has taken his

monthly income at Rs.4,000/- only and thereby awarded meager amount of compensation.

10. On the other hand, the learned Standing Counsel for the Insurance Company has contended that considering the nature of injuries and the length of treatment, the Tribunal has adequately awarded the compensation and it has rightly awarded just compensation under the head of disability and therefore, there is no reason to interfere with the said findings arrived at by the Tribunal. Thus, he sought for dismissal of the appeal.

11. In order to award compensation in case of personal injuries, the Apex Court in ***Raj Kumar Vs. Ajay Kumar and another***[1] held as under:

> "5. The heads under which compensation is awarded in personal injury cases are the following :
>
> Pecuniary damages (Special Damages)
>
> (i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.
>
> (ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:
>
> (a) Loss of earning during the period of treatment;

[1] MACD 2011 (SC) 33

(b) Loss of future earnings on account of permanent disability.
(iii) Future medical expenses.
Non-pecuniary damages (General Damages)
(iv) Damages for pain, suffering and trauma as a consequence of the injuries.
(v) Loss of amenities (and/or loss of prospects of marriage).
(vi) Loss of expectation of life (shortening of normal longevity).
In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life. Assessment of pecuniary damages under item (i) and under item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses - item (iii) -- depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages - items (iv), (v) and (vi) – involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant. Decision of this Court and High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses some difficulty is the assessment of the loss of future earnings on account of permanent disability - item (ii)(b).”

12. In light of the principles laid down in the aforementioned case, it is suffice to say that in determining the quantum of compensation payable to the victims of accident, who are disabled either permanently or temporarily, efforts should always be made to award adequate compensation not only for the physical injury and treatment but also for the loss of earnings, inability to lead a normal life and enjoy amenities, which would have been enjoyed but for disability caused due to the accident.

13. A perusal of the material on record reveals that, in order to substantiate his claim that he has sustained 70% permanent disability, the claimant apart from examining PW-2 got marked Ex.A-12-Disability Certificate issued by NIMS Hospital, Hyderabad. Therefore, considering Ex.A-12 and the evidence of PW-2, this Court is inclined to accept permanent disability suffered by the claimant at 70%.

14. Coming to the quantum of compensation, considering the fact that the claimant has been eking out his livelihood through his profession as a driver and considering the

prevailing minimum wages at the relevant point of time, this Court is inclined to fix his monthly income at Rs.5,000/- instead of Rs.4,000/- taken by the Tribunal, and annually it comes to Rs.60,000/-. As the claimant was aged about 32 years at the time of accident, the appropriate multiplier is ‘16’ instead of ‘17’ as applied by the Tribunal. Thus, under the head of loss of income due to disability, the claimant is awarded a sum of Rs.6,72,000/- (Rs.60,000 x 16 x 70/100). The compensation of Rs.1,00,000/- towards pain and suffering, Rs.50,000/- towards attendant charges, Rs.2,38,918/- towards medical expenses and Rs.3,50,000/- towards fixing of artificial limb and its maintenance, awarded by the Tribunal, are not interfered with. Thus, in all, the claimant is entitled for the compensation of Rs.14,10,918/- and it can be rounded to Rs.14,10,900/-.

15. Accordingly, the M.A.C.M.A. is allowed enhancing the quantum of compensation awarded by the Tribunal from Rs.11,47,000/- to Rs.14,10,900/-. The enhanced amount shall carry interest at the rate of 7.5% per annum from the date of the petition till the date of realization. The amount

shall be deposited by respondent Nos.1 and 2 jointly and severally within a period of two months from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the entire compensation amount. However, the claimant shall pay the deficit Court Fee on the enhanced compensation. No order as to costs.

16. Pending Miscellaneous Applications, if any, shall stand closed.

JUSTICE M.G. PRIYADARSINI

Date: 03.03.2023
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THE HON'BLE JUSTICE M.G. PRIYADARSINI

<u>M.A.C.M.A. No. 1352 of 2015</u>

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