

THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**M.A.C.M.A.No.2352 OF 2014****JUDGMENT:**

This MACMA is filed under Section 173 of the Motor Vehicles Act, 1988 by the claimant seeking enhancement of compensation, aggrieved by the order and decree dt.17.09.2007 passed in M.V.O.P.No.41 of 2005 by the XVIII Additional Chief Judge, City Civil Court, Hyderabad (for short "the Court below").

2. For the sake of convenience, the parties will be hereinafter referred to as they are arrayed before the Court below.

3. Brief facts of the case are that on 20.09.2004 at about 5 p.m., while the petitioner was proceeding on Suzuki Motorcycle bearing No. AP-28-S-1738 as a pillion rider from Gowraram Village to Gajwel, and when he reached Muthrajpalli Crossroads, the driver of RTC Bus bearing No.AP-11-Z-486 drove it in a rash and negligent manner at high speed and hit the motorcycle on which the petitioner was travelling in the opposite direction, due to which, the petitioner fell down and sustained fracture and bleeding injuries all over his body. Immediately, he was shifted to Gandhi Hospital, Secunderabad where he was admitted as

inpatient and underwent surgery of open reduction internal fixation (nail) fixed in his left leg and skin grafting and discharged on 27.09.2004 and again admitted on 30.09.2004 and underwent another surgery and was discharged on 19.11.2004. The petitioner is still taking treatment for the injuries. At the time of the accident, the petitioner was aged 28 years, doing agriculture and supervisor of borewell and earning Rs5,000/- per month. Due to the injuries, he became permanently disabled and lost the capacity of earning. Therefore, he laid the claim against the respondents seeking compensation of Rs.3,00,000/-.

4. The respondents filed a written statement denying the petition allegations and mainly contended that the accident was as a result of the rash and negligent driving of the petitioner. Due to the triple riding of the motorcycle, the rider of the motorcycle could not control the brake and the movement of the hands and thereby causing the accident.

5. The Tribunal framed the following issues:

i) Whether the petitioner sustained injuries in the accident that took place due to rash and negligent driving of the driver of the Bus bearing No.AP-11-Z1-486 by the respondent No.1 vehicle?

ii) Whether the petitioner is entitled for compensation? If so, to what amount and from whom?

iii) To what relief?

6. The petitioner to prove his case, examined PWs.1 and 2 and got marked Exs.A1 to A14. On behalf of the respondents, the driver of the Bus was examined as RW-1 but no document was marked. Ex.X1 was marked as a Court document.

7. After considering the oral and documentary evidence available on record, the Court below concluded that the petitioner contributed negligence in causing the accident and as such, the Court below fixed the ratio of negligence upon the driver of the Bus and the petitioner at 75:25 respectively and out of the amount which the petitioner was originally entitled to i.e Rs.1,40,000/-, the Court below awarded the petitioner Rs.1,05,000/- owing to his part of negligence at 25% (Rs.1,40,000/- - Rs.35,000/-) with proportionate costs and interest @ 7.5% per annum. Hence, the present appeal.

8. Heard both sides and perused the record.

9. Learned Counsel for the petitioner contended that the Court below erred in concluding that both vehicles are at fault but the charge sheet was laid against the driver of the RTC Bus alone. He also

contended that the amounts awarded under various heads are also very meagre and 25% disability as per Ex.A6 was not considered along with the application of the multiplier method.

10. Per contra, learned Counsel appearing for the respondents would contend that the Tribunal was justified in fixing the compensation and the liability and prayed to dismiss the appeal.

11. The ground raised by the learned Counsel for the petitioner with regard to the liability being attributed to the petitioner owing to his contribution to the negligence which was assessed at 25% by the Court below is that the charge sheet was laid against the driver of the Bus and it is deemed that the driver of the bus himself was solely responsible for the accident. The Court below discussed the decision of this Court in ***United India Insurance Company Limited vs. K. Anjaih***¹, where in a case of an accident involving a lorry and a scooter which was being driven by its rider along with two pillion riders, this Court attributed contributory negligence on part of the driver of the scooter and assessed his part of liability at 25%.

12. As seen from the evidence on record, there is ample evidence to show that there was another pillion rider on the motorcycle being

¹ 2004 (4) ALD 444.

driven by the rider and the ground raised by the petitioner with regard to the charge sheet against the driver of the bus, cannot be taken into consideration in view of the decision stated supra. When the very legislation under which the petitioner is claiming compensation is contravened by the petitioner along with the rider of the motorcycle and the other pillion rider, the petitioner cannot expect the Courts to interfere with a legally sustainable order either sympathetically or otherwise, in order to evade from liability which accrued upon him due to the contributed negligence. Hence, this Court is not inclined to set-off the liability cast upon the petitioner as assessed by the Court below.

13. Learned Counsel for the petitioner further raised a ground vis-à-vis the income of the petitioner, however, in the absence of any evidence, the Court below was justified in assessing the same at Rs.3,000/- p.m. The same was not considered by the Court below for the purpose of calculating future loss of earnings using the multiplier method as the Court below found that Ex-A6 disability certificate @ 40% was issued on 02.08.2005 and the claim petition was filed in the month of December 2005 and the petitioner could've filed the certificate along with the O.P and concluded that EX-A6 was brought into existence only

for the purpose of the claim and further discarded the evidence of P.W2 doctor.

14. Merely because Ex-A6 was not filed at the time of institution of the O.P, the *bonafide* of the petitioner cannot be adversely concluded in the absence of concrete evidence that such a disability certificate was brought into existence merely for the purpose of gaining compensation. As seen from Ex-A6, it was issued by the Medical Board assessing the disability of the petitioner at 40%, which cannot be doubted at all. As such, the Court below erred in not applying the multiplier method to assess the loss of future earnings of the petitioner. The Court below awarded a lump sum of Rs.75,000/- towards loss of earnings and disability which is hereby substituted with the foregoing calculation.

15. The monthly income of the petitioner was assessed @ Rs.3,000/- and this Court is inclined to consider the same. The annual income of the petitioner would be Rs.36,000/-(Rs.3,000 x 12). The petitioner was not awarded future prospects and the same at 40% as per the decision of the Hon'ble Supreme Court in ***National Insurance Company Limited vs. Pranay Sethi and others***² is to be considered. Therefore, the future prospects of the petitioner comes to Rs.50,400/-

² (2017) 16 SCC 680.

(36,000 + 14,400/-). The disability of the petitioner is 40% as per Ex-A6 and this Court would consider the same. As such, 40% is to be considered on account of disablement $(Rs.50,400 \times 40/100) = 20,160/-$, the appropriate multiplier is 17 as per **Sarla Verma**³ as the petitioner is aged 28 years. Thus, the loss of future earnings of the petitioner would come to $Rs.20,160/- \times 17 = Rs.3,42,720/-$.

16. The Court below awarded compensation to the petitioner under other heads, and the same are justified, except that of the above discussed head of 'loss of earning and disability' which is clarified and substituted by this Court in the preceding paragraph.

17. As such, this Court is of the considered view in granting compensation to the petitioner as against the compensation amount granted by the Tribunal as follows:

Head	Amount awarded by Tribunal	Amount entitled /awarded by this Court
Extra nourishment	Rs. 5,000/-	Rs. 5,000/-
Loss of earnings and disability	Rs.75,000/-	Rs. 3,42,720/-
Medicines	Rs.26,000/-	Rs. 26,000/-
Pain and suffering	Rs.20,000/-	Rs. 20,000/-
Expenses towards operation	Rs.10,000/-	Rs10,000/-
Transportation	Rs.4,000/-	Rs. 4,000/-

³ (2009) 6 SCC 121

Total	Rs.1,40,000/- But awarded Rs.1,05,000/- (Deducting 25% owing to the petitioner's negligence.	Rs.4,07,720/- But awarded Rs.3,05,790/- (Deducting 25% owing to the petitioner's negligence.
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18. Accordingly, the M.A.C.M.A. is allowed in part, enhancing the compensation amount awarded by the Tribunal from Rs.1,05,000/- **to Rs.3,05,790/-** (Rupees Three Lakh and Five Thousand, Seven hundred and ninety only) with the interest of 7.5% from the date of petition till the date of realization. The respondents shall deposit the said compensation amount together with interest and costs after giving due credit to the amount already deposited, if any, within a period of two months from the date of receipt of a copy of this judgment. The petitioner/appellant is directed to pay the deficit Court within one month from the date of receipt of the copy of this Order. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

NAMAVARAPU RAJESHWAR RAO, J

21st day of February, 2023

BDR

