

THE HON'BLE SMT. JUSTICE M.G. PRIYADARSINI

M.A.C.M.A. No. 1815 of 2015

JUDGMENT:

Being not satisfied with the quantum of compensation awarded in the order and decree, dated 27.08.2010 made in O.P.No.1193 of 2008 on the file of the XI Additional Chief Judge (FTC), City Civil Court, Hyderabad (for short "the Tribunal"), the appellant/claimant preferred the present appeal seeking enhancement of the compensation.

2. Vide aforesaid order, the Tribunal has awarded an amount of Rs.80,000/- towards compensation to the appellant-claimant against the respondents herein, who are owner and insurer of the offending vehicle i.e., Water Tanker bearing No.AP 10 T 6809, jointly and severally, along with proportionate costs and interest @ 7.5% per annum from the date of filing the petition till realization of the amount for the injuries received by him in a road accident that occurred on 20.04.2008.

3. Heard the learned counsel for the appellant-claimant and the learned Standing Counsel for the respondent

No. 2, Insurance Company. Perused the material available on record.

4. The only contention of the learned counsel for the appellant-claimant is that in order to establish the fact that on account of the injuries suffered by the appellant, he had suffered permanent disability at 30%, the claimant has produced, Ex.A.8, disability certificate, issued by the doctor, P.W.2. However, the tribunal without there being any valid reason brushed aside the said evidence and did not award the compensation under the head of disability. Therefore, the learned counsel prays to award just and reasonable compensation under the head of disability, duly taking into account the monthly income of the appellant and applying multiplier '18' considering his age as '20' years.

5. The learned Standing Counsel appearing on behalf of respondent No.2 sought to sustain the impugned award contending that Ex.A8, disability certificate, was not issued by the competent Medical Board and it was issued by a private doctor i.e., P.W.2, and therefore, the Tribunal has rightly rejected the claim under the head of disability.

Hence, the learned Standing Counsel submits that there are no grounds to interfere with the said findings arrived at by the tribunal and prayed for dismissal of the appeal.

6. 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 offending vehicle. Even the learned counsel for the appellant is not disputing the quantum of compensation awarded by the tribunal except the rejection of claim under the head of permanent disability.

7. Therefore, this Court is inclined to consider the aspect whether or not the claimant is entitled for compensation under the head of loss of income due to disability. As seen from the medical record, the claimant had sustained Grade-I compound fracture of both bones of right leg and deep lacerated flexor tendon of right foot (soft tissue injury). P.W.2 in his evidence deposed that due to fracture of both bones of right leg, he was operated and a rod was into his right leg and his right leg was shortened and he was limping while walking and there was a stiffness in the right knee and due to the said stiffness he is unable

to sit, squat and stand. Therefore, he assessed the disability sustained by the claimant at 30% and issued Ex.A8 to that effect. Admittedly, P.W.2 is not a Member of Medical Board, but he is the doctor, who treated the claimant. Therefore, considering the evidence of P.W.2, nature of injuries sustained by the claimant and Ex.A8, disability certificate, this Court is inclined to fix the disability suffered by the claimant at 25%.

8. Insofar as the income of the claimant is concerned, according to the claimant, he is aged 20 years at the time of the accident and working as Security Personnel in Big Bazar and used to earn Rs.5,000/- per month. However, as there was no documentary or oral evidence in this regard, the Tribunal has fixed the income of the claimant at Rs.3,000/- per month which is on lower side. Considering the age and prevailing minimum wages at the relevant point of time, this Court is inclined to fix the income of the claimant at Rs.5,000/- per month. Hence, under the head of loss of income due to disability, the claimant is awarded a sum of Rs.2,70,000/- (Rs.5,000 x 12 x 18 x 25/100). The amount of Rs.80,000/- awarded by

the tribunal under other heads and the rate of interest awarded thereon are not interfered with. Thus, in all, the claimant is entitled for the total compensation of Rs.3,50,000/-.

9. At this stage, the learned Standing Counsel for the Insurance Company submits that the claimant claimed only a sum of Rs.2,00,000/- as compensation and the quantum of compensation which is now awarded would go beyond the claim made which is impermissible under law.

10. In view of the Judgments of the Apex Court in ***Laxman @ Laxman Mourya Vs. Divisional Manager, Oriental Insurance Company Limited and another¹*** and ***Nagappa Vs. Gurudayal Singh²*** the claimant is entitled to get just compensation even if it is more than the amount what was claimed by the claimant.

11. In the result, the M.A.C.M.A. is allowed enhancing the quantum of compensation awarded by the tribunal from Rs.80,000/- to Rs.3,50,000/-. The enhanced amount shall carry interest at the rate of 7.5% per annum from the

¹ (2011) 10 SCC 756

² 2003 ACJ 12 (SC)

date of the petition till the date of realization. The amount shall be deposited within a period of two months from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the said amount. However, the claimant shall pay the deficit court fee on the enhanced compensation. No order as to costs.

Miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.G. PRIYADARSINI

22.02.2023
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