

THE HONOURABLE JUSTICE M.G. PRIYADARSINI

M.A.C.M.A.No.1845 of 2014

JUDGMENT:

This appeal is filed by the claimant against the award and decree dated 03.01.2014 made in M.V.O.P.No.775 of 2010 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, Warangal (for short “the Tribunal”).

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

3. Appellant is the petitioner in the main O.P. According to the petitioner, on 15.07.2007 at 5.20 pm, he was proceeding as passenger in Auto bearing No.AP 36V 5776 from Hanamkonda to Hasanparthy and when the said Auto reached near old Mandakini Bar, Naminagar, Hanamkonda, it turned turtle since the driver of the said auto lost control over it as he drove the said auto in rash and negligent manner with high speed. As a result, he sustained severe injuries, including a fracture at pelvis. Immediately, he was shifted to M.G.M.Hospital, Warangal, where he was treated as inpatient from 15.07.2007 to 28.07.2007. Later, he underwent surgery in NIMS Hospital, Hyderabad, on 25.01.2008 and was discharged on 31.01.2008. Further, he underwent treatment for the injuries in different hospitals in between 15.07.2007 to 15.04.2008. According to the petitioner, he was auto driver and earning Rs.4,000/- per

month. Due to the said injury, he became permanently disabled and lost his income. Therefore, he laid the claim for Rs.5,00,000/- towards compensation for the injury sustained by him against the respondents 1 and 2 jointly and severally, who are owner and the insurer of the offending vehicle.

4. While the respondent No.1 remained ex parte, respondent No.2 filed counter stating that no such accident occurred and the petitioner has not submitted any record to show his age and earning capacity. It is further contended that the compensation claimed by the petitioner is excessive and therefore, prays to dismiss the petition.

5. Based on the above pleadings, the Tribunal framed the following issues:

1. *Whether the petitioner is entitled to compensation of Rs.5,00,000/- from respondent Nos.1 and 2, for causing injuries to him in a motor vehicular accident on 15.07.2007 at about 05.20 hours near old Mandakini Bar, Naimnagar, due to rash and negligent with high speed driving of auto bearing No.AP 36V 5776, by its driver?*

6. In order to prove the claim, PWs.1 & 2 were examined and Exs.A1 to A8 got marked on behalf of the petitioner. On behalf of respondent No.2, no witnesses were examined and no document was marked.

7. Considering the oral and documentary evidence available on record, the Tribunal has awarded an amount of Rs.2,00,000/- towards compensation to the claimant along with proportionate costs and interest @ 7.5% per annum from the date of petition till realization against the respondents jointly and severally.

8. Heard the learned counsel for the appellant-claimant and the learned Standing Counsel for the respondent No.2-Insurance. Perused the material available on record.

9. The learned Counsel for the claimant contended that the tribunal failed to appreciate the evidence of the doctor, PW.2, who deposed that the claimant is incapable to lead marital life and became permanent disability. In view of the said evidence, the compensation awarded by the tribunal is very meager and needs enhancement.

10. The learned Standing Counsel appearing on behalf of Respondent No.2-Insurance Company sought to sustain the impugned award of the Tribunal contending that considering the oral and documentary evidence on record, the learned Tribunal has rightly awarded the compensation of Rs.2,00,000/- and the same needs no interference by this Court.

11. Admittedly, there is no dispute with regard to the manner of accident. The Tribunal after evaluating the evidence of PW.1 coupled with the documentary evidence available on record i.e., Exs.A.1 and A.2, copy of FIR and Charge Sheet, categorically held that the accident occurred due to rash and negligent driving of the driver of Auto bearing No.AP 36 V 5776. Therefore, I see no reason to interfere with the finding of the Tribunal in holding that the accident occurred due to the rash and negligent driving of the driver of the said auto.

12. Coming to the quantum of compensation, in order to establish his case, the appellant examined himself as PW.1 and the Doctor in NIMS, who treated him, as P.W.2. P.W.2 in his evidence has categorically stated that the claimant was admitted in his hospital on 16.01.2008 and suffered rupture of urethra with pelvic fracture. On 25.01.2008, transperineal urethroplasty was conducted and he was discharged on 31.01.2008, with supra pubic catheter and perurathral catheter. Considering Exs.A3 to A8, the Tribunal has awarded Rs.20,000/- towards loss of earnings during treatment period; Rs.25,000/- towards loss of future earnings; Rs.5,000/- towards transport charges; Rs.30,000/- towards extra nourishment and medical bills; Rs.20,000/- towards pain and suffering, Rs.1,00,000/- towards injuries. This Court is of the

view that the said amounts awarded by the tribunal are just and reasonable and needs no interference by this Court. Insofar as loss of amenities and loss of expectation of life is concerned in **Kavita v. Deepak and others**¹ the Apex Court held that in respect of victims of accident, who are disabled either permanently or temporarily, adequate compensation should be awarded not only for the physical injury and treatment but also for the loss of earning and inability to lead a normal life and enjoy amenities, which one would have enjoyed had it not been for the disability. The Supreme Court further held that the amount awarded under the head of loss of earning capacity is distinct and does not overlap with amount awarded for pain, suffering, loss of enjoyment of life and medical expenses. Relying upon the decision of **Nizam's Institute of Medical Sciences v. Prasanth S.Dhananka**², the Apex Court also held that "assuming the claimant's life expectancy to be 55 years, we deem it appropriate to award a sum of Rs.3,00,000/- under the head of loss of amenities and loss of expectation of life".

13. In the instant case, since the evidence of P.W.2 discloses that the appellant was suffering with erectile dysfunction and that there is possibility of suffering impotency, due to the pelvic

¹ (2012) 9 SCC 604

² (2009) 6 SCC 1

fracture sustained in the accident, this Court deems it fit to award a sum of Rs.1,50,000/- towards loss of amenities and loss of expectation of life. Thus, in all the claimant is entitled to Rs.3,50,000/- towards compensation.

14. In the result, the M.A.C.M.A. is partly allowed by enhancing the compensation from Rs.2,00,000/- to Rs.3,50,000/-. The awarded amount shall carry interest at 7.5% p.a. from the date of petition till the date of realization, payable by respondent Nos. 1 and 2 jointly and severally. Time to deposit the amount is one month from the date of receipt of a copy of this order. On such deposit, the claimant is entitled to withdraw the amount without furnishing any security. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

.02.2023
Gms/Tsr

JUSTICE M.G.PRIYADARSINI

THE HONOURABLE JUSTICE M.G. PRIYADARSINI

M.A.C.M.A.No.1845 of 2014

02..2023

gms/tsr