

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

M.A.C.M.A. No.384 of 2015

JUDGMENT:

Being not satisfied with the quantum of compensation awarded in the order and decree, dated 11.02.2014, passed in M.V.O.P.No.2182 of 2010 on the file of the Chairman, Motor Accidents Claims Tribunal cum X Additional Chief Judge, City Civil Court, Hyderabad (for short "the Tribunal"), the appellant/claimant preferred the present appeal seeking enhancement of the compensation.

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

The appellant filed a petition under Section 166 of the Motor Vehicles Act claiming compensation of Rs.9,00,000/- for the injuries sustained by him in a road accident that occurred on 3.4.2010. According to the appellant, on 3.4.2010 at about 4-00 p.m. while he was traveling in auto bearing No.AP 22 X 4553 from Khillaghanapuram to Appareddypalli as passenger and when the auto reached near Appareddypalli turning, the auto turned turtle due to rash and negligent driving of the driver of the auto resulting the petitioner sustained left and

right pelvic fractures and pubic rami fracture and blunt injuries all over the body. Immediately he was shifted to Government Hospital, Mahaboobnagar for treatment by his friends and from there he was shifted to Osmania General Hospital, Hyderabad, for better treatment. Therefore, he claimed compensation against the respondents, who are the owner and insurer of the offending auto jointly and severally.

3. Respondent No.1 remained ex parte. Respondent No.2 filed counter disputing the manner of accident, nature of injuries sustained by the petitioner, age, avocation and income of the petitioner. It is further contended that the compensation claimed by the petitioner is highly excessive. Therefore, prayed to dismiss the petition.

4. Respondent No.2 in its additional counter contended that the driver of the offending auto was not holding valid driving license at the time of accident.

5. After considering the claim and the counter filed by respondent No.2, and on evaluation of the evidence, both oral and documentary, the learned Tribunal has partly allowed the O.P. and awarded compensation of

Rs.2,65,200/- with proportionate costs and interest at 7.5% per annum from the date of presentation of petition till the date of deposit or realization, whichever is earlier.

6. Heard learned counsel for the appellant and learned Standing Counsel for respondent No.2.

7. Learned counsel for the appellant mainly submits that the quantum of compensation awarded by the Tribunal is on lower side and seeks enhancement of the same. He further submits that the Tribunal ought to have considered the partial permanent disability of 30% and loss of earning capacity of 100% as stated by the doctor i.e. PW.2 who treated the appellant but the Tribunal erroneously considered 30% only.

8. Per contra, the learned Standing Counsel for the Insurance Company submits that the quantum of compensation awarded by the Tribunal is based on evidence and the same needs no interference.

9. 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.

10. The short question that arises for consideration is *“whether the compensation awarded by the Tribunal is just and equitable”?*

11. In order to establish his case, the appellant examined himself as PW.1. According to the petitioner, after the accident, he was shifted to Osmania General Hospital, Hyderabad and took treatment as inpatient from 4.4.2010 to 29.5.2010 i.e. 55 days and also took treatment at Sai Specialty Clinic, Secunderabad with Dr.V.K.V. Prasad as outpatient. In support of the injuries as well as the disability sustained by him, the appellant got marked Exs.A3 to A10 and examined the Doctor, who treated him as P.W.2. As per the evidence of P.W.2 coupled with the documentary evidence, the claimant has sustained fracture of right pelvis, fracture of left pelvis (rupture of urethra). PW-2 Dr.V.K.V. Prasad deposed that on 18.5.2011 the claimant went to his clinic with a complaint of inability to stand or lift weights and polyuria. He treated the patient with physiotherapy and medication and after examining him clinically, radiologically and went through his old medical records, he issued Ex.A7 disability certificate stating that he sustained permanent partial and functional

disability is around 30% and the loss of earning capacity is 100%, as he cannot work as labourer. He advised the claimant to carry a hand stick for support while walking. He cannot sit, squat, walk, stand or bend normally and cannot carry weights.

12. Insofar as the amount awarded towards compensation under the head of loss of future income, the main contention of the learned counsel for the appellant is that though P.W.2 the Doctor stated that the claimant has sustained 30% of the permanent partial disability and loss of earning capacity at 100%, the Tribunal has taken 30% disability, which appears to be very less. Therefore, considering the nature of injuries sustained by the petitioner and the functional disability sustained by him, this Court is inclined to fix the functional disability at 50%.

13. According to the petitioner, he is a labour by profession and used to earn Rs.4,500/- per month. Therefore, the tribunal has rightly taken the income of the petitioner at Rs.4,500/- per month. The petitioner was aged 54 years at the time of accident. In view of the judgment of **Sarla Verma Vs. Delhi Transport**

Corporation¹, the suitable multiplier to be adopted for calculating the loss of earnings would be '11'. Therefore, the loss of earnings on account of the disability would be $\text{Rs.}4,500/- \times 12 \times 11 \times 50/100 = \text{Rs.}2,97,000/-$.

14. Further considering the injuries sustained by the petitioner, the tribunal rightly awarded an amount of **Rs.27,000/-** towards loss of earnings during the period of treatment for about six months, **Rs.15,000/-** towards medical bills, **Rs.25,000/-** towards pain and suffering and **Rs.15,000/-** towards loss of amenities and shock and as such, the same are not disturbed. The tribunal also awarded an amount of Rs.5,000/- towards transport charges, which is very less and as such, it is enhanced to **Rs.20,000/-** towards transport and attendant charges. Further an amount of **Rs.25,000/-** is awarded to the petitioner for the injuries received by him. Thus in all the petitioner is entitled for **Rs.4,24,000/-** under all counts.

15. Accordingly, the appeal is partly allowed by enhancing the compensation from Rs.2,65,200/- to **Rs.4,24,000/-**. The enhanced amount shall carry interest at 7.5% p.a. from the date of petition till the date of

¹ 2009 ACJ 1298

realization. The 2nd respondent is directed to pay the said compensation amount and recover the same from the first respondent. The 2nd respondent is directed to deposit the compensation within one month from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the entire compensation amount without furnishing any security. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE M.G. PRIYADARSINI

03.03.2023

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