

THE HON'BLE SMT. JUSTICE RENUKA YARA

M.A.C.M.A.No.98 of 2017

JUDGMENT:

Heard Sri T. Rahul, learned counsel for the appellant and Sri P. BhanuPrakash, learned standing counsel for respondent No.2/Insurance Company and perused the record.

2. This is an appeal preferred by the appellant/claimant aggrieved by the award passed by the learned Special Judge for the Trial of Offences under S.Cs and S.Ts (POA) Act-cum-VI Addl. Metropolitan Sessions Judge-Addl. Chairman, MACT-cum-XX Addl. Chief Judge at Secunderabad(for short 'the Tribunal') in O.P.No.385 of 2005,dated 20.11.2008.

3. The claim petition arose on account of the injuries sustained by the appellant in road traffic accident, which took place on 08.05.2005 at 7pm. On that day, when the appellant along with her daughter and brother's son was proceeding in a jeep bearing No.AP 23V 163 from Sadashivpet towards Patancheru, near the outskirts of Kandi Village on National Highway No.9, a lorry bearing No.AP 16 TT 0779 driven by its driver in rash and negligent manner dashed the jeep from opposite direction causing grievous injuries to the inmates of the jeep. The appellant and others received multiple

injuries while the daughter of appellant succumbed to injuries on 09.05.2005 at Gandhi Hospital while undergoing treatment. The appellant was admitted in Government Hospital, Sangareddy and later shifted to Gandhi Hospital, Secunderabad and there from to Yashoda Hospital, Somajiguda, Hyderabad, where, he had undergone treatment in different spells. As such, he filed claim petition seeking compensation of Rs.8,00,000/-.

4. The Tribunal upon examining the claim awarded compensation of only Rs.1,36,000/- with interest 6% per annum. Aggrieved by the said compensation awarded, the present appeal is preferred.

5. In grounds of appeal, it is contended that the appellant suffered 100% disability due to neurological disorders which cannot be certified in terms of physical disability. It is further contended that the Tribunal has deducted 1/3rd of income towards personal expenses which is taken into consideration in death cases but not in injury cases. Lastly, the appellant contended that his income should have been taken as Rs.8,000/- per month while computing loss of future earnings due to disability (dependency).

6. The Tribunal examined the evidence adduced by PW3 who is a treated doctor. The witness PW3 deposed that the appellant

sustained major head injury with left spastic Hemiparesis (brain stem confusion) and was treated at Yashoda Hospital. He further deposed that the appellant is a totally disabled person. The appellant was admitted in Yashoda Hospital on 28.06.2005 and discharged on 29.06.2005 with an advise for surgery which would cost Rs.1,50,000/-. The appellant has lost memory power and is unable to move from bed as per treated doctor at Yashoda hospital. The appellant is able to obey simple commands and requires assistance to perform daily activities. The appellant needs regular follow up treatment for development of higher brain functions. While so, the Tribunal has observed that there is no disability certificate and therefore, took the disability as 25%. It is further observed that Ex.A9/Discharge summary shows that the appellant suffered from brain stem contusion and lost consciousness and therefore, unable to perform his activities and there is no possibility to recover from the said condition. It is further observed that the disability certificate is not obtained due to illiteracy and ignorance and on that ground, the entire claim petition could not be thrown out, as such, the disability percentage is taken as 25%.

7. The fact situation shows that the appellant sustained grievous injury to head and is completely bed ridden. In fact, the appellant has lost memory and is able to obey only simple commands with no higher brain activity. In the circumstances, when the evidence of the doctor who treated the appellant is crystal clear that the appellant is bed ridden and would not be able to perform his daily activities without assistance and that his brain capacity is impaired, the functional disability has to be taken at 100%. Merely because the appellant being an illiterate person and disabled person could not obtain disability certificate, does not disentitle him to seek just compensation. In view of the evidence of PW3 and PW4, the functional disability is taken as 100%.

8. The appellant was aged 32 years as on the date of accident. The appellant claimed that as on the date of accident, he was doing cloth business with income of Rs.8,000/- per month. It is further claimed that the said business has been closed down. The Tribunal due to lack of evidence has taken monthly income as Rs.3,000/- by taking the income as Rs.100/- per day as that of a labourer. When the appellant is doing cloth business, his income cannot be on par with that of a labourer at Rs.3,000/- per month. As a businessman, the notional income of the appellant is taken at

Rs.4,000/- per month. In injury cases, the personal expenses are not deducted. The Tribunal erroneously deducted 1/3rd of the income towards personal expenses.

9. To quantify the compensation towards loss of future earnings due to disability, as per age and income of deceased, if 40 percent of the income is included as future prospects as per law laid down in **National Insurance Company Ltd. vs. Pranay Sethi and others**¹, the annual income would be Rs.67,200/- (Rs.4,000/-x 12 + 19,200/-). As per the authority in **Sarla Verma v. Delhi Transport Corporation**², if the aforesaid annual income is multiplied with relevant multiplier of '16', the loss of future earnings of the appellant due to disability at 100% is Rs.10,75,200/- (Rs.67,200/- x 16).

10. The Tribunal has awarded Rs.7,725/- towards medical bills as per medical record and therefore, this Court is not inclined to interfere with the said finding.

11. The appellant has sustained one head injury which is grievous in nature. Therefore, grant of Rs.20,000/- towards grievous injury is not meager, but, reasonable.

¹2017 (6) 170 (SC)

²(2009) 6 S.C.C. 121

12. Further, the Tribunal has granted only Rs.5,000/- towards pain and suffering and Rs.1,000/- each for extra nourishment and transport charges. Considering the pain and suffering undergone by the appellant due to a grievous injury, he is awarded an amount of Rs.50,000/- towards pain and suffering, Rs.20,000/- towards extra nourishment and Rs.10,000/- towards transportation. In all, the appellant is entitled for Rs.11,82,925/-.

13. In so far as interest is concerned, the Tribunal has awarded interest @ 6% per annum from the date of petition till the date of realization. This Court by relying upon the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**³, inclined to increase the rate of interest awarded by the learned Tribunal to 7.5% per annum on entire compensation amount from the date of petition till the date of realization.

14. Accordingly, the M.A.C.M.A. is allowed. The compensation awarded by the Tribunal is hereby enhanced from Rs.1,36,000/- to Rs.11,82,925/-, which shall carry interest at 7.5% per annum from the date of petition till the date of realization. However, the appellant shall pay the deficit Court Fee on the enhanced compensation. Respondent Nos.1 and 2 shall deposit the amount within a period of (8) weeks from the date of receipt of copy of this judgment. On such

³2013 ACJ 1403 = 2013 (4) ALT 35

deposit, appellant is entitled to withdraw the entire amount without furnishing the security.

Miscellaneous Petitions, if any, pending in this appeal, shall stand closed. There shall be no order as to costs.

RENUKA YARA, J

Date: 19.06.2025
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