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(2023) 03 TEL CK 0083

In the Telangana High Court

Case No : Motor Accident Civil Miscllaneous Appeal No. 2855 Of 2017

Nevuri Mangamma — APPELLANT

Vs

Dr.Kalyan Sundaram Rajalaxmi Anr — RESPONDENT

Date of Decision : 13-03-2023

Acts Referred:

Citation : (2023) 03 TEL CK 0083

Hon'ble Judges : M.G. Priyadarsini, J

Bench : Single Bench

Advocate : Jagathpal Reddy, Kasi Reddy

Final Decision : Partly Allowed

Judgement

1. Not being satisfied with the quantum of compensation awarded by the Chairman, Motor Accident Claims Tribunal-cum-Special Sessions Judge for trial of cases under SCs/STs (POA) Act-cum-VII Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar in M.V.O.P. No.934 of 2011, dated 13.03.2017, the present appeal is filed by the claimant seeking enhancement of compensation.

2. For the sake of convenience, the parties have been referred to as arrayed before the Tribunal.

3. The facts in issue are as under:

On 24.08.2011 at 2-00 p.m. she along with her son Sai Charan was proceeding on his motorcycle bearing No. AP 28 AZ 7752 from Balajinagar to Lalgadi Malakpet Village and when they reached near Sports School, Thumkunta Village on Rajiv Rahadari, one Ford Car bearing No. AP 10 AX 4445 being driven by its driver came in a rash and negligent manner from opposite direction while overtaking another vehicle dashed the petitioner’s bike. As a result of which, the petitioner and her son both fell down from the bike and sustained injuries. Immediately, she was shifted to Gandhi Hospital where she was admitted for one day. The doctors informed her for amputation hand. As such, she was discharged

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against medical advice and got admitted in Sunshine Hospital, Secunderabad where she was operated, debridement, square nailing for fracture both bones of forearm, external fixation of right radius with pen reduction internal fixation with DCP plating (10 holed DCP) for fracture of right humorous were done. She incurred about Rs.1,00,000/- towards medical expenses. According to the petitioner, she was aged about 40 years, doing cloth business and tailoring work and earning Rs.10,000/- per month. But due to injuries, her life became miserable, as her movements are restricted and she cannot fold her hands. Thus, she is claiming compensation of Rs.10,00,000/- under various heads against the respondent Nos.1 and 2, who are the owner and insurer of the offending car.

4. First respondent remained exparte. Second respondent filed counter disputing the manner of accident, age, avocation and income of the injured, nature of injuries sustained by the petitioner and the treatment taken by her.

5. Considering the oral and documentary evidence available on record, the Tribunal has awarded an amount of Rs.6,50,000/- towards compensation to the appellant-claimant against the respondent Nos.1 and 2 jointly and severally, along with proportionate costs and interest @ 6% per annum from the date of petition till the date of payment, as against the claim of Rs.10,00,000/-.

6. Heard the learned counsel for the appellant-claimant and the learned Standing Counsel for the second respondent-Insurance Company. Perused the material available on record.

7. The learned counsel for the appellant-claimant has submitted that although the claimant, by way of evidence of P.Ws.1 to 4 and Exs.A.1 to A.14 and Exs.X1 and X2, established the fact that the petitioner has sustained grievous injuries in the accident and became permanently disabled, the Tribunal awarded very meager amount under various heads.

8. The learned Standing Counsel appearing on behalf of second respondent-Insurance Company sought to sustain the impugned award of the Tribunal contending that considering the avocation of the petitioner, the learned Tribunal has awarded reasonable compensation and the same needs no interference by this Court.

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 by the respondent-Insurance Company.

10. Now the question that arises for consideration is whether the compensation awarded by the tribunal is just and equitable?

11. The main contention advanced by the learned counsel for the appellant is that in order to establish the fact that on account of the injuries sustained by the petitioner in the accident, she has suffered permanent disability, she examined herself as PW-1 and reiterated the contents of the petition. PW-2 Dr.T.Chiranjeevi, Orthopedic Surgeon in Sunshine Hospital deposed that the

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petitioner was admitted in their hospital on 25.8.2011 with the following injuries:

1) Open grade III A segmental fracture both bones fracture right

2) Comminuted fracture shaft of right humorous (middle/lower 1/3rd).

She underwent surgery through debridement of the compound wounds square nailing of both radious and ulna and external fixator application for disted and radius plus DCP plating for fracture of right humorous and the above injuries are grievous in nature. She was discharged on 30.08.2011. She required assistance for all her daily activities for two months. She was readmitted on 23.6.2012 for non-union of fracture of both bones of right forearm, operated with open reduction and internal fixation with plating for both bones after removal of both square nails. She was advised limb elevation and immobilization of right forearm. According to PW-2, patient wants implant removal, which costs around Rs.30,000/- to Rs.40,000/-.

12. According to PW-3 who is the Billing Manager of Sunshine Hospital, he issued Ex.X1 cash final bill in favour of the petitioner for Rs.70,000/-. PW-1 was admitted in their hospital on 25.8.2011 and again on 9.6.2012 and they issued Ex.A7 bills. She paid total bill for Rs.25,093/-. Ex.X2 is another cash bill for Rs.5,000/-.

13. PW-4 is the Civil Assistant Surgeon at Area Hospital, Kondapur. He deposed that PW-1 sustained permanent disability at 54% of right upper limb. Ex.A11 disability certificate was issued by their Medical Board, which was issued by Government of Telangana stating that the percentage of disability of PW-1 is 54%. Therefore, considering the evidence of PWs.1 and 4, the tribunal rightly taken the disability at 54%. According to the petitioner, she used to earn Rs.10,000/- per month on cloth business as well as tailoring work. Admittedly, no document was filed to prove the same. However, considering the age and avocation of the petitioner, the tribunal has taken her income at Rs.4,000/- per month, which appears to be meager. Therefore, her income can be taken at Rs.5,000/- per month. According to the petitioner, she was aged 40 years. In view of the judgment of Sarla Verma Vs. Delhi Transport Corporation 2009 ACJ 1298, the suitable multiplier to be adopted for calculating the loss of earnings would be '15'. Therefore, the loss of earnings on account of the disability would be Rs.5,000/- x 12 x 15 x 54/100 = Rs.4,86,000/- for which the petitioner is entitled. Further the tribunal rightly awarded Rs.95,000/- towards medical expenses, Rs.40,000/- towards future medical expenses, Rs.50,000/- towards pain and suffering, Rs.25,000/- towards loss of income during the period of treatment, Rs.12,200/- towards transport charges, Rs.30,000/- towards extra nourishment and Rs.9,000/- towards attendant charges, which are just and reasonable and as such, the same are not disturbed. Thus in all, the petitioner is awarded an amount of Rs.7,47,200/- under all counts.

14. Accordingly, the appeal is partly allowed by enhancing the compensation from Rs.6,50,000/- to Rs.7,47,200/-. The enhanced amount shall carry interest

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at 7.5% p.a. from the date of petition till the date of realization to be payable by the respondent Nos.1 and 2 jointly and severally. The amount shall be deposited within a period of one month from the date of receipt of a copy of this order. 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.

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