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

M.A.C.M.A. Nos. 4015 of 2014 & 4277 of 2014

COMMON JUDGMENT:

By order, dated 07.04.2014, the learned Chairman, Motor Accident Claims Tribunal-cum-Additional chief Judge, City Civil Courts at Hyderabad (for short, 'the tribunal') partly allowed O.P.No.2887 of 2011 awarding total compensation of Rs.19,02,140/- in favour of the claimant towards compensation. Seeking enhancement of compensation, the claimant preferred MACMA No. 4015 of 2014 and challenging the quantum of compensation as excessive, the Insurance Company-M/s. Royal Sundaram Alliance Insurance Company Limited, respondent No. 2 before the tribunal, preferred MACMA No. 4277 of 2015.

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

3. The claimant filed a petition under Section 166 of the Motor Vehicles Act claiming compensation of Rs.30,00,000/- for the injuries sustained by him in a motor vehicle accident that took place on 01.12.2011. It is stated that on 01.12.2011, at about 13:45 hours, while the claimant was proceeding on his motorcycle towards Hi-tech city and when he reached the

railway station flyover of high-tech city, the offending vehicle i.e., Car bearing No.AP 37 BD 4116, owned by respondent No.1 and insured with respondent No.2, being driven by its driver in a rash and negligent manner at high speed, dashed the motorcycle of the claimant, as a result of which, the claimant fell down and sustained grievous injuries. Immediately after the accident, the claimant was shifted to Anupama Hospital; from there he was shifted to Sunshine Hospital, where he underwent operation to his spinal cord and incurred Rs.5,00,000/- towards medical expenses. It is further stated that due to the injuries on the spinal cord, the claimant is unable to do any work, confined to bed and therefore, he laid the claim-petition claiming compensation of Rs.30,00,000/-.

4. Considering the claim-petition, counter filed by the Insurance Company and the oral and documentary evidence on record, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of driver of the Car and awarded total compensation of Rs.19,02,140/- with interest @ 7.5% per annum payable by respondent Nos.1 and 2 jointly and severally. Aggrieved by the said order, the Insurance Company as well as the claimant filed the present appeals.

5. Heard both sides and perused the material on available on record.

6. The learned counsel for the appellant, claimant, submits that the claimant has sustained grievous injuries i.e., (i) spinal cord fracture (traumatic paraplegia) curved by D-12 compression; (ii) fracture with cord edema and proximal tibia fracture right apart from other injuries. The claimant had underwent for spinal cord surgery; that he had taken follow up treatment; prolonged physiotherapy; that due to the injury to the spinal cord fracture, the claimant is confined to bed; that his limbs became defunct; his movements are restricted and still undergoing treatment. It is contended that subsequent to the operation at Sunshine Hospital on 01.12.2011, he was again admitted at Ravi Helios Hospital on 27.12.2011 and discharged only on 22.03.2012. Even thereafter, he was again admitted at Udai Clinic on 03.10.2012 and was discharged on 04.10.2012. It is contended that though P.W.5, the Associate Professor at Gandhi Medical College, deposed that the claimant is suffering with post-traumatic para paralysis i.e., weakness in both lower limbs and suffered with permanent disability at 50%, the actual

functional disability is 100% as the claimant is completely confined to bed. It is further submitted that though the tribunal has taken the monthly income of the claimant at Rs.10,000/-, did not add future prospects to the established income of the claimant and since the claimant has been completely confined to bed, the tribunal ought to have awarded the compensation duly adding future prospects. It is contended that inasmuch as the claimant has suffered fracture to spinal cord and confined to bed, the amount of Rs.2,000/- awarded towards extra nourishment; Rs.1,500/- awarded towards transportation to hospitals; Rs.25,700/- awarded towards future medical expenses are meager and needs enhancement. It is lastly contended that the tribunal was not justified in not awarding amounts towards physiotherapy expenses; loss of earnings during treatment period; loss of amenities in life; attendant charges and pain and suffering. Therefore, the learned counsel sought for enhancement of the compensation awarded by the tribunal.

7. On the other hand, the contention of the learned Standing Counsel appearing for the insurance company, is that the Tribunal erred in awarding Rs.5,00,000/- towards treatment

and medicines without considering the fact that the claimant has already received Rs.90,000/- under medi -claim policy the said reimbursement of treatment/medical expenses disentitle the applicant to claim compensation under the Act as it is nothing but double-benefit.

8. Insofar as the manner in which the accident took place, the Tribunal has framed the Issue No.1 as to whether the accident had occurred due to rash and negligent driving of the driver of the Car, and having considered the evidence of P.W.1 and Exs.A.1 & A.2, it has categorically observed that the accident has occurred due to the rash and negligent driving of the driver of the car and has answered the issue in favour of the claimant and against the respondents which needs no interference by this Court.

9. Insofar as the quantum of compensation is concerned, as seen from Ex.A.3, wound certificate, the claimant has sustained fracture of proximal tibia and fracture of neck of fibula right and those injuries are grievous in nature. Ex.A.4, discharge summary issued by Sunshine Hospital, shows that the claimant was admitted in the hospital on 01.12.2011 and underwent

surgery and was discharged on 10.12.2011. So also, Ex.A.5, discharge summary issued by Ravi Helios Hospital, shows that he was admitted in the said hospital on 27.12.2011 and discharged on 22.03.2012. It is also on record that he had taken continuous physiotherapy for muscular stimulation for left lower limb. Exs.A.6 and A.7, discharge summaries, further disclose that the claimant had taken follow up treatment.

10. P.W.2, Neuro-Surgeon of Sunshine Hospital, deposed regarding the treatment taken by the claimant and he further deposed that the claimant suffered D-12 compression fracture of spine and spinal cord edema and contusion and that the claimant underwent surgery for spine injury. It is his specific evidence that due to the injuries, the claimant is not in a position to walk, bear weight on both legs and he cannot do his normal duties. He further asserted that Exs.A.3, A.4, A.8, A.9, A.16 and A.24 are issued from their hospital. P.W.4, the Physiotherapist at Ravi Helios Hospital, deposed as to the claimant's taking physiotherapy under him for muscular stimulation. He too deposed that in spite of the physiotherapy, the claimant was unable to stand and walk due to the defunct of lower limbs. P.W.5, the Assistant Professor at Gandhi

Medical Hospital, deposed that the claimant has suffered 50% permanent disability and he has substantiated Ex.A.20, disability certificate, issued by the competent Medical Board in assessing the disability of the claimant at 50%. From the above evidence, it is clear that in spite of continuous treatment and physiotherapy, the claimant is unable to walk and move and has been bedridden. Such being the case, though the medical board assessed the disability of the claimant at 50%, this Court is inclined to fix the functional disability at 75%.

11. Coming to the income, the claimant was aged 38 years as seen from Ex.A.20. According to the claimant, he was working as employee in M/s. MetaMax Communications Limited and getting income of Rs.11,500/- per month. Though he filed Ex.A.18, pay slips and Ex.A.19, appointment letter, issued by MetaMax Communications Limited, since none connected thereto was examined, the tribunal has rightly fixed the monthly income of the claimant at Rs.10,000/-.

12. Insofar as the future prospects are concerned, recently, the Apex Court in ***Sidram v. The Divisional Manager, United***

India Insurance Company Limited (CIVIL APPEAL No. 8510 OF 2022, dated 16.11.2022) has observed as under:-

> *"31. It is now a well settled position of law that even in cases of permanent disablement incurred as a result of a motor-accident, the claimant can seek, apart from compensation for future loss of income, amounts for future prospects as well. We have come across many orders of different tribunals and unfortunately affirmed by different High Courts, taking the view that the claimant is not entitled to compensation for future prospects in accident cases involving serious injuries resulting in permanent disablement. That is not a correct position of law. There is no justification to exclude the possibility of compensation for future prospects in accident cases involving serious injuries resulting in permanent disablement. Such a narrow reading is illogical because it denies altogether the possibility of the living victim progressing further in life in accident cases – and admits such possibility of future prospects, in case of the victim's death."*

(**emphasis added**)

13. In view of above said decision, the appellant is entitled to future prospects. As the age of the appellant is 38 years at the time of the accident, he is entitled the future prospects at 40% as per the decision of the Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi and others***[1].

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[1] 2017 ACJ 2700

14. Therefore, by adding 40% future prospects, the monthly income of the appellant comes to Rs.14,000/- (Rs.10,000/- + Rs.4,000/-). In view of the judgment of ***Sarla Verma Vs. Delhi Transport Corporation***[2], 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 comes to Rs.14,000/- x 12 x 15 x 75/100 = Rs.18,90,000/-. However, the amount awarded by the tribunal towards medical expenses is not interfered with. As rightly pointed out by the learned counsel for the claimant, considering the fact that the claimant suffered fracture to spinal cord, has taken follow up treatment for a considerable period at different hospitals, confined to bed, the amounts awarded under the heads of transportation charges; extra nourishment; future medical expenses are meagre and need to be enhanced. So also, considering the nature of injuries and the period of treatment, the tribunal was not right in denying the amounts under the heads of pain & suffering; attendant charges; physiotherapy expenses; loss of earnings during treatment; and loss of amenities in life. Therefore, considering the medical evidence, nature of injuries

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[2] 2009 ACJ 1298

and length of treatment, this Court is inclined to enhance the amounts as under:-

Sl.No.	**Claim made under the head**	**Amount granted by tribunal**	**Amount now granted/ enhanced by this Court**
1.	Transport to Hospitals	1,500/-	25,000/-
2.	Medical expenses	4,32,940/-	4,32,940/-
3.	Extra Nourishment	2,000/-	20,000/-
4.	Pain & Suffering	---	40,000/-
5.	Attendant Charges	---	25,000/-
6.	Future medical expenses	25,700/-	50,000/-
7.	Physiotherapy expense	---	30,000/-
8.	Loss of earnings during treatment period	---	1,00,000/-
9.	Loss of amenities to life	---	1,00,000/-
10.	Future loss of earnings	14,40,000/-	18,90,000/-
	Total amount	19,02,140/-	27,12,940/-

15. There remains the contention of the learned Standing Counsel for the Insurance Company that since the claimant has already been reimbursed Rs.90,000/- towards treatment/medicine expenses under Medi-claim policy, the said amount has to be deducted from the compensation amount.

This Court sees no force in the said contention since the said reimbursement of expenses under an independent contract of insurance has no bearing upon the claim under a statutory liability. Moreover, the applicant had paid premium for purchasing the said insurance. Thus, the benefit, which emanated from the said contract, cannot be adjusted against the compensation payable under the Act. In a recent judgment delivered by the Hon‟ble Bombay High Court in **Royal Sundaram Alliance Insurance Co. Ltd. -v- Ajit Chandrakant Rakvi and Ors.**[3], the issue of double-benefit has been decided in a similar manner basing on the decision of the Apex Court in **Helen C. Rebello v.┐ Maharashtra State Road Transport Corporation and Another**[4]. It was held by the court that the nature of the proceedings under the Act is of relevance and a claim petition for compensation in regard to motor accident filed by the injured is neither a suit nor an adversarial *lis* in the traditional sense. Thus, the benefits emanating from an independent and unconnected contract of insurance cannot be considered by the Tribunal as it besets with variables rooted in contract.

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[3] 2020 ACJ 691
[4] 1999 ACJ 10 (SC)

16. In the result, M.A.C.M.A. No. 4015 of 2014 filed by the claimant stands allowed in part enhancing the quantum of compensation awarded by the tribunal from Rs.19,02,140/- to Rs.27,12,940/- to be paid by the respondents jointly and severally. Consequently, M.A.C.M.A. No. 4277 of 2014 stands dismissed. The enhanced amount shall carry interest at 7.5% per annum from the date of filing of the O.P. till the date of realization. The respondent No. 2 is directed to deposit the amount within a period of two months from the date of receipt of a copy of this order. On such deposit, the claimant is entitled to withdraw the same. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE M.G.PRIYADARSINI

05.01.2023
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THE HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A. Nos. 4015 of 2014 & 4277 of 2014

DATE: 05-01-2023