

HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A. No. 1724 OF 2006

JUDGMENT:

1. This Appeal is arising out of the order, dated 17.01.2006, in O.P. No.990 of 2003 on the file the Chairman, Motor Accidents Claims Tribunal-cum-IV Additional District Judge (FTC), Nizamabad (for short, 'the Tribunal').

2. The appellant herein is the petitioner and the respondents herein are the respondents in O.P. No.990 of 2003.

3. The brief facts of the petition are as follows: On 02.02.2003, while the appellant was coming towards hospital from Dubba and when he was passing in front of the house of one Thalla Mohan in Kisan Nagar village, one Bajaj chetak scooter bearing No.AP-25-H-3649, being driven in a rash and negligent manner at high speed, dashed against the appellant. As a result of which, the appellant sustained fracture to his right leg both bones, fracture to right hand ring finger, head injury and received multiple grievous injuries. He was admitted in Government hospital in Nizamabad on 02.02.2003 and discharged on 13.02.2003. Thereafter, he had undergone treatment in a private hospital. He incurred medical expenditure of Rs.50,000/- and he suffered loss of earnings due to the injuries suffered by him in the accident. By the date of accident, he was 15 years old and doing milk business and earning Rs.8,000/- p.m. The appellant averred that respondent No.1, being the owner of the vehicle, respondent No.2, being its insurer, are jointly and severally liable to pay the compensation for the injuries received by him.

Though initially he claimed a compensation of Rs.60,53,000/-, later, he restricted his claim to Rs.1,00,000/- with interest at the rate of 24% p.a. jointly and severally liable to be payable by both the respondents.

4. The police Balkonda registered a case in Crime No.17 of 2003 under Section 337 of I.P.C. against the driver of the Bajaj chetak scooter bearing No.AP-25-H-3649.

5. The respondent No.1 was set *ex parte* by the Tribunal.

6. The respondent No.2 – insurance company filed its counter denying its liability and the averments made by the appellant in the petition.

7. Basing on the pleadings, the Tribunal framed the following issues:

1. Whether the motor vehicle accident occurred due to the rash and negligent driving of the vehicle Bajaj chetak scooter bearing No.AP-25-H-3649, by its driver resulting injuries to the petitioner?

2. Whether the petitioner is entitled for compensation? If so, what amount and from which of the respondents?

3. To what relief?

and 2

8. During course of trial, on behalf of the appellant, as he was a minor aged 15 years, his mother was examined as PW.1 and got marked Ex.A-1 – copy of F.I.R., Ex.A-2 – copy of charge sheet, Ex.A-3

– copy of wound certificate, Ex.A-4 - policy copy, Ex.A-5 - C-book of scooter, Ex.A-6 - photos of the injured with negatives, Ex.A-7 - lab report, Ex.A-8 - discharge summary, Ex.A-9 - bills issued by Amrutha Laxmi Hospital, Ex.A-10 – bunch of medical bills 13, Ex.A-11- x-ray film and Ex.A-12 case sheet.

9. PW.2 Dr. Jaya Prakash, was examined on behalf of the appellant and Ex.C-1 letter issued by the Superintendent Government Hospital, Nizamabad was marked.

10. On behalf of the respondents, no witnesses were examined, except marking Ex.B-1 policy of insurance copy by consent.

11. On consideration of the evidence available on record, the Tribunal holding that the rash and negligent driving of the crime vehicle is proved awarded compensation of Rs.76,100/- on account of the injuries received by the appellant in the accident.

12. The appellant being aggrieved by the Award passed by the Tribunal in granting compensation of Rs.76,100/- as against his claim of Rs.1,00,000/-, preferred this Appeal seeking enhancement of the compensation.

13. Heard the learned counsel, representing on behalf of Smt. K. Sarala Mahender Reddy, learned counsel for the appellant.

14. The Appeal against respondent No.1-owner of the crime vehicle was dismissed for default *vide* order of this Court on 01.07.2016.

15. The point that arises for consideration in this matter is whether there are sufficient grounds for enhancement of the compensation?

16. POINT: The learned counsel for the appellant cited a decision of this Court reported in *Meka Chakra Rao Vs. Yelubandi Babu Rao @ Reddamma and others*¹ wherein it was observed that when the appeal is preferred by the claimant-appellant and he failed to take notices to the owner or his legal representatives, in such a case, the appeal can be heard and decided only in the presence of insurer of crime vehicle.

17. It is submitted by the learned counsel for the appellant that the Tribunal has awarded the compensation of Rs.76,100/-, as against the claim of Rs.1,00,000/-, which is as under:

S.No.	Name of the Head	Compensation awarded by Tribunal
1.	Two grievous injuries	Rs.10,000/-
2.	One simple injury	Rs.1,000/-
3.	Medical bills	Rs.40,100/-
4.	Pain and suffering	Rs.20,000/-
5.	Loss of earnings	Nil
6.	Transportation and extra nourishment	Rs.5,000/-
TOTAL		Rs.76,100/-

18. The learned counsel for the appellant further submits that the Tribunal has not awarded the compensation keeping in view the nature of injuries, pain and suffering and the medical treatment undergone by the appellant. The learned counsel further referred to Para 16 of the award, which reads as follows:

¹ 2001 (1) ALT495 (DB)

“PW.1 in her evidence stated that her son underwent operation twice and a steel rod was inserted. PW.2 who treated the patient has stated that the injured undergone operation on 02.02.2003 and on 06.02.2003 and external fixator was done. As per the evidence of PW.2, Ex.A-12 the petitioner has proved that the injured underwent operation twice. PW.1 in her evidence stated that after discharging from the hospital on 13.01.2003 again the injured underwent operation after removal of steel rod, but PW.2 has not stated anything about the conduct of operation and inserting of steel rod. As per the evidence of PW.2 only external fixator was put to right leg finger. Therefore, the evidence of PW.1 that the steel rod was inserted to the injured right leg and operation was conducted and removal of steel rod has proved to be false. But on considering the evidence of PW.2, Ex.A-12 it is proved that injured underwent operation twice in Amrutha Laxmi Hospital, Nizamabad.”

19. The Tribunal has observed that the appellant had undergone operation twice. But awarded only Rs.20,000/- towards pain and suffering and has not awarded any amount towards attendant charges, and it has not awarded sufficient compensation for the treatment undergone by him. It was under the impression that as there was no material to show that steel rod was inserted, the appellant was not entitled for the compensation even for the operations undergone by him. Therefore, the compensation awarded by the Tribunal is entitled to be enhanced keeping in view of the nature of treatment undergone by the appellant, in the light of the evidence of the medical officer. It is obvious that the following are the injuries suffered by the appellant:

1. Lacerated wound measuring 4 x 2 c.m. leg exposing the fracture tibia;

2. Lacerated wound measuring 4 x 5 over palmer aspect of right ring finger exposing fracture proximal phalanx right ring finger;

3. Lacerated wound measuring 3 x 2 over dorsum of right ring finger.

20. The opinion of the medical officer, PW.2, clearly reveals that he received two grievous injuries and one simple injury. He was treated as inpatient for about 11 days in the hospital. Ex.A-3 is the wound certificate and Ex.A-12 is the case sheet produced by PW.2. The other documents Ex.A-7 - lab report and Ex.A-8 - discharge summary would clearly reveal that the appellant had suffered two grievous injuries and one simple injury and that he underwent two operations. The appellant was a minor, aged about 15 years, by the date of accident and, therefore, he is entitled for some more compensation for the pain and suffering and also under other heads.

21. Admittedly, the claim against the 1st respondent, who is the owner of the scooter, has been dismissed for default vide order of this Court on 01.07.2016. He remained *ex parte* before the Tribunal. However, notices have been served to the 2nd respondent-insurance company, which is made as a party in this Appeal. In spite of the same, none appeared on behalf of the 2nd respondent-insurance. Hence, arguments are deemed heard.

22. In the light of the decision of Madras High Court in *Tamil Kumaran Vs. Senthil Kumar*², and in view of the facts and circumstances of the case, the following is the tabular form showing

² LAWS(MAD) 2010 (11) 312

the compensation enhanced by this Court under the relevant heads:

S.No.	Name of the Head	Awarded by Tribunal	Awarded by this Court
1.	Two grievous injuries	Rs.10,000/-	Rs.20,000/-
2.	One simple injury	Rs.1,000/-	Rs.3,000/-
3.	Medical bills	Rs.40,100/-	Rs.40,100/-
4.	Pain and suffering	Rs.20,000/-	Rs.25,000/-
5.	Loss of earnings	Nil	Nil
6.	Transportation and extra nourishment	Rs.5,000/-	Rs.10,000/-
TOTAL		Rs.76,100/-	Rs.98,100/-

23. Considering the age of the injured, nature of injuries, nature of treatment and two operations undergone by him for the injuries, for extra nourishment and attendant charges, the compensation awarded by the Tribunal is enhanced from Rs.76,100/- to Rs.98,100/-.

24. In the result, the Appeal is partly allowed enhancing the compensation awarded by the Tribunal from 76,100/- to Rs.98,100/-, keeping in tact the rate of interest at the rate of 7.5% per annum awarded by the Tribunal. The respondents 1 and 2 are jointly and severally liable to pay the compensation. The 2nd respondent is directed to deposit the balance amount of compensation out of the total enhanced amount of compensation within one month from the date of receipt of a copy of this order. On such deposit, the appellant, since attained majority, is permitted to withdraw the entire amount of compensation without furnishing any security.

25. In consequence, miscellaneous petitions, if any, pending in this Appeal, shall stand closed. No order as to costs.

G. SHYAM PRASAD, J

Date: 02.12.2016.
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