

HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A. No. 418 OF 2006

JUDGMENT:

1. This Appeal is arising out of the order, dated 28.09.2005, in M.V.O.P. No.1343 of 2002 on the file the Chairman, Motor Vehicle Accident Claims Tribunal-cum-VII Additional District Judge (Fast Track Court), Guntur (for short, 'the Tribunal').

2. Appellant herein is the petitioner-injured, and the 1st respondent herein is the owner of the Auto bearing No.AP16TT 3653 and the 2nd respondent herein is its insurer, who filed the petition before the Tribunal, under Sections 163(A), 166 and 140 of the Motor Vehicles Act, 1988 (for short, 'the Act') claiming compensation of Rs.2,00,000/- on account of the injuries sustained by him in a motor vehicle accident.

3. The brief facts of the petition are that, on 05.11.2002, at about 10-30 a.m., while the appellant along with others was proceedings in the Auto, and when the Auto reached near Market Yard, Katuru Road, Vuyyuru, the Auto turned turtle, due to the rash and negligent driving of its driver. As a result of which, the appellant and others sustained severe injuries. Immediately, the appellant was shifted to Government General Hospital, Vuyyur and, after taking first aid, he was referred to University Government General Hospital, Vijayawada, where he was treated as inpatient for his left knee joint movement restriction. As the appellant sustained a fractured injury to his left knee joint, his marriage prospects are affected and he suffered permanent disability. A case in Crime No.192 of 2002, for

the offences under Sections 337 and 338 I.P.C., was registered by the Vuyyuru Town P.S against the driver of crime vehicle. Though, he claimed initial compensation of Rs.1,00,000/-, subsequently, enhanced the same to Rs.2,00,000/-.

4. Respondent No.1, owner of the crime vehicle, remained *ex parte* before the Tribunal.

5. Respondent No.2, insurer of the crime vehicle, filed written statement denying the rash and negligent act on the part of the driver of the crime vehicle and contended that the driver of the crime vehicle was not holding valid driving license to drive the vehicle and further contended that the crime vehicle was not insured and sought for dismissal of the petition.

6. The Tribunal, on consideration of the pleadings and evidence of the witnesses PWs.1 to 3 and the documents Exs.A-1 to A-6 and Ex.X-1, passed an Award granting compensation of Rs.62,000/-, as against his claim of Rs.2,00,000/-, with proportionate costs and interest at the rate of 7.5% p.a. from the date of petition till realization making the respondents jointly and severally liable to pay the compensation.

7. Being aggrieved by the quantum of compensation, the appellant preferred the instant Appeal seeking enhancement of the compensation.

8. Heard Mr. T.S.R. Prasad, learned counsel for the appellant, and Mrs. S.A.V. Ratnam, learned standing counsel for the 2nd

respondent-insurance company. The claim against respondent No.1, owner of the crime vehicle, was dismissed for default *vide* order of this Court on 22.04.2016.

9. The point for consideration in this matter is, whether there are sufficient grounds for enhancement of the compensation?

10. POINT: Admittedly, the appellant was a minor when he met with the accident. He claimed Rs.1,45,000/- towards loss of earnings on account of the permanent disability suffered by him. In support of which, he got examined PW.3, Dr. V. Somanadham, Professor of Orthopedics, Sddhardha Medical College, Government General Hospital, Vijayawada, who has treated him. According to his evidence, the appellant was admitted in the Government Hospital at Vijayawada on 05.11.2002 on being referred from Government Hospital, Vuyyur, with fracture of left femur bone involving knee joint. On 09.11.2002, reduction and POP application was performed to him and he was discharged on 13.11.2002. The evidence of PW.3 further shows that the appellant was referred to Neuro and Eye Specialists for the problems of headache and low vision. Again, on 16.08.2005, PW.3 re-examined the appellant and found that the movement of his left knee joint is restricted by about 60 degrees and opined that there is deformity of left knee joint. He further opined that as per Ex.A-6, dated 16.08.2005, there was angulations of left thigh bone near the knee joint as a result of which the appellant would not be able to sit and squat like a normal person. PW.3 also stated that it is difficult for the appellant to do agricultural works. PW.3 issued the wound certificate, Ex.A-3, showing the

percentage of disability of the appellant as 30% disability, which is partial in nature. The evidence of the medical officer, PW.3, clearly reveals that he had examined the appellant three years after the accident and opined that the appellant has difficulty in attending because of the deformity suffered by him. Admittedly, the appellant is an agricultural coolie. It is also stated that he is unmarried and his marital prospects have been affected because of the disability suffered by him in the accident. The Tribunal has not considered all these aspects while awarding compensation and awarded compensation on a lesser side.

11. The Tribunal has taken the notional income of the appellant as Rs.15,000/- p.a. whereas the appellant claimed Rs.100/- per day as he was an agricultural coolie prior to the accident. Even if the minimum wages are taken into consideration, the appellant is entitled for an amount of Rs.36,000/- p.a. in view of the principle laid down by this Court in *Machineni Rama Devi and others Vs. M. Satyanarayana and another*¹, wherein this Court relied on the decision of the Apex Court in *Lakshmi Devi and others Vs. Mohd. Tabbar and another*². In view of the principle laid down by the Apex Court in *Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another*³, the relevant multiplier applicable to the age group of the appellant between 15 to 25 years is '18'. If the annual income of the appellant is multiplied with the relevant multiplier, the amount of compensation to be awarded towards loss of earnings would come to Rs.6,48,000/-. Though the appellant

¹ 2013 (6) ALD 178

² 2008 (3) ALD 129 (SC)

³ 2009 (6) SCC 121

suffered 30% permanent disability to his left lower limb, it can be treated as partial in nature and attributing the disability to the entire body, it should be taken as 20% disability. The amount of compensation to be awarded under the head of 20% disability of Rs.6,48,000/- would come to Rs.1,29,600/- but the Tribunal erroneously referring to II Schedule of Act, which has become obsolete now, taken the annual notional income of the appellant as Rs.15,000/- and multiplied it with multiplier 15, which came to Rs.2,25,000/- and had taken 20% out of the same i.e., Rs.45,000/- towards loss of earnings due to permanent disability.

12. The amount of compensation awarded by the Tribunal under various heads is shown below in the tabular form:

Sl.No.	Name of the Head	Compensation awarded
01.	Permanent disability	Rs.45,000/-
02.	Pain and suffering	Rs.7,000/-
03.	Medicines expenses, attendant charges, extra nourishment and conveyance	Rs.5,000/-
04.	Loss of amenities	Rs.5,000/-
TOTAL		Rs.62,000/-

13. No doubt, the award of the Tribunal is based on some material but, however, the Tribunal could have awarded some more amounts under the other heads, keeping in mind the decisions of the Apex Court and this Court, including under the heads of pain and suffering, notional medical expenditure, attendant charges and mental trauma. Hence, this Court feels to further enhance the compensation.

14. The following is the tabular form showing the amount of compensation awarded by the Tribunal and enhanced by this Court under each head:

Sl.No.	Name of Head	Awarded by Tribunal	Awarded by this Court
01.	Permanent disability	Rs.45,000/-	Rs.1,29,600/-
02.	Pain and suffering	Rs.7,000/-	Rs.20,000/-
03.	Medical expenses, attendant charges, extra nourishment and conveyance	Rs.5,000/-	Rs.15,000/-
04.	Loss of amenities	Rs.5,000/-	Rs.15,000/-
TOTAL		Rs.62,000/-	Rs.1,79,600/-

15. Accordingly, the Appeal is allowed in part, enhancing the compensation awarded by the Tribunal from Rs.62,000/- to Rs.1,79,600/-, keeping in tact the rate of interest awarded by the Tribunal. The respondents are directed to deposit the entire amount of compensation within three months from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the same without furnishing any security.

16. As a sequel, miscellaneous petitions, pending if any, shall stand closed as infructuous.

G. SHYAM PRASAD, J

Date: 09.12.2016.
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HON'BLE SRI JUSTICE G. SHYAM PRASAD

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