

HON'BLE SRI JUSTICE G.SHYAM PRASAD

MACMA No.100 OF 2006

JUDGMENT:

This appeal arises out of the order dated 30.08.2005 in M.O.P.No.446 of 2004 on the file of Chairman, Motor Accidents Claims Tribunal-cum-VI Additional District Judge, Visakhapatnam (for short "Tribunal").

2. The appellant, who is injured in a motor vehicle accident, filed M.O.P.No.446 of 2004 claiming compensation of Rs.4,50,000/-, out of which an amount of Rs.43,000/- was awarded by the Tribunal with interest at 7.5% per annum against respondents 1 and 2. The appellant being aggrieved by the impugned award, filed the present appeal claiming for enhancement of compensation.

3. The brief facts of the case are that on 14-07-2003 at 9.30 p.m. while the appellant was returning from Sheelanagar Petrol Bunk and going towards his house, after closing his shop and when he reached the National Highway, one Tipper lorry bearing AP 9 5987 came in a rash and negligent manner and dashed against him. The appellant fell down and sustained a serious head injury and fractures to 5 ribs on his left side of chest and injuries on his right wrist and elbow and other minor injuries. He was shifted to Care Hospital, Visakhapatnam where he had undergone treatment for 16 days. Later, he was shifted to R.K.Hospital, Gajuwaka, where he had taken treatment for another 16 days as inpatient. The appellant

had incurred huge expenditure for medical expenses and transport. He claims to have suffered severe pain due to head injury and he has also suffered loss of memory due to the injury to his head. He could not do his business after the accident and suffered heavy loss in the business. The Station House Officer, Gajuwaka, registered a case in Cr.No.74 of 2003. The appellant claimed compensation of Rs.4,50,000/- against respondents 1 and 2 on account of the injuries sustained by him in the motor accident.

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

5. POINT:- Smt.P.Anjana Devi, learned counsel for appellant is not present. Therefore, Smt.V.Shanti See is appeared as Amicus Curiae on behalf of the appellant to conduct the case on behalf of the appellant. Sri B.Devanand, learned counsel appearing on behalf of 2nd respondent advanced arguments.

6. Heard arguments on both sides.

7. Learned counsel appearing on behalf of the appellant submits that the Tribunal has not considered the medical bills filed by the appellant to a tune of Rs.1,21,000/- under Ex.A4.

8. Learned counsel appearing on behalf of the appellant submits that the evidence of the Medical Officers PWs.2 and 3 was not considered by the Tribunal in the right perspective. The Tribunal has totally ignored their evidence and presumed that as there is no Certificate issued by the Medical Board, the appellant had not

suffered any disability. The presumption of the Tribunal is not correct and therefore, the appellant is entitled for the medical expenses incurred by him and also entitled for 20% disability suffered by him.

9. Learned counsel for respondents submits that the Tribunal has awarded compensation basing on the evidence of Medical Officers Pws.2 and 3 and as there is no Medical Certificate issued by the Medical Board to prove 20% disability, the Tribunal has not awarded any compensation for the disability. It is further submitted that the compensation awarded by the Tribunal is in accordance with law and the evidence available on record.

10. The Tribunal has not considered the medical bills filed by the appellant to a tune of Rs.1,21,000/-. The Tribunal has not given any satisfactory grounds for rejecting these bills. On the other hand, the tribunal presumed that the appellant incurred medical expenses to a tune of Rs.8,000/- and awarded Rs.8,000/- as against Rs.1,21,000/- claimed by the appellant. There is ample evidence on record to show that the appellant had received severe head injury and he has undergone treatment in two Hospitals. He was treated as inpatient in one hospital for 16 days and in another Hospital for another 16 days. There is also evidence on record to show that he had undergone operation. The evidence of PW.2-Medical officer would reveal that on 14-07-2003 he examined the appellant and he had given first-aid treatment to him and referred him to Care Hospital, Visakhapatnam, in view of the seriousness of the injuries suffered by him. Again on 29-07-2013 the appellant came back and admitted in his Hospital for treatment and he had given

treatment to him till 14-08-2003. PW.2 clearly stated that due to head injury, the appellant had developed psychosis for which he was treated by Psychiatrist. He had clearly given evidence to the effect that the appellant had received fracture to his left side ribs 4 in number and also received fracture of temporal bone on his left side. No doubt, PW.1 has given first-aid to the appellant and referred him to Care Hospital but he was the person who treated PW.1 at first instance. Therefore, his evidence is trustworthy.

11. PW.3 is another Doctor, who had treated the appellant in Care Hospital. His evidence reveals that he had given treatment to appellant from 15-07-2003 to 29-07-2003. Even, thereafter he had treated the appellant in R.K.Hospital, Gajuwaka, where he was treated as inpatient for 10 days. The Medical Officer has clearly opined that as per the scanning report, there is some damage to the brain and the patient was unconscious. He had regained consciousness after two days. He developed weakness on left side hand and leg. The evidence of PW.3 has not been properly considered by the Tribunal. The evidence of Pw.3 clearly reveals that the appellant had sustained head injury, which caused damage to the brain.

12. Having regard to the evidence of PWs.2 and 3 and the nature of treatment undergone by the appellant, the appellant is entitled for an amount of Rs.40,000/- towards fracture injury on left four ribs. The appellant is also entitled for an amount of Rs.10,000/- towards medical bills.

13. Learned counsel appearing on behalf of the appellant submits that the appellant has suffered 20% disability, but there is no Medical Certificate to prove that the appellant suffered 20% disability. There is no Medical Certificate issued by the Medical Board. Therefore, the rejection of the claim by the Tribunal holds good.

14. Learned counsel appearing on behalf of the appellant submits that the income of the appellant was taken into consideration as Rs.1,500/- per month as against the income he got out of his business at Rs.15,000/- per month. There is no proof for the income of the appellant. The appellant was stated to be doing some business but he has not produced any Income Tax returns nor any authenticated proof of his earning Rs.15,000/- per month. Therefore, the income of the appellant is taken into consideration as Rs.3,000/- per month considering him as an unskilled labourer and the Tribunal rightly awarded Rs.3,000/- towards loss of earnings. The medical evidence shows that the petitioner had suffered damage to his brain and he has also suffered 20% disability, which is partial and permanent in nature as per the medical evidence. Since the appellant could not produce the medical records, the percentage of disability could not be believed. However, it is a fact that the appellant had received injury to his head and there was damage to the brain and he became unconscious at the time of the accident and later also he suffered pain in his left leg and weakness in left leg and hand.

15. Considering the nature of injuries, the loss of earnings for a period of three months can be taken into consideration @ Rs.3,000/- per month, which comes to Rs.9,000/-. The future loss of earnings has not been awarded by the Tribunal. Therefore, an amount of Rs.25,000/- is awarded towards loss of future earnings, attendant charges and extra nourishment. The Tribunal has rightly awarded an amount of Rs.2,000/- towards transport charges and Rs.20,000/- towards head injury, which needs no interference by this Court.

16. Hence, the compensation is enhanced as follows:

S.No.	Name of Head	Compensation Awarded by Tribunal	Compensation Awarded by this Court
01.	Medicines	Rs.8,000/-	Rs.10,000/-
02.	Transport	Rs.2,000/-	Rs.2,000/-
03.	Loss of income for three months	Rs.3,000/-	Rs.9,000/-
04.	Head injury	Rs.20,000/-	Rs.20,000/-
05.	Fracture injury on left 4 ribs	Rs.10,000/-	Rs.40,000/-
06.	Future loss of earnings, attendant charges and extra nourishment	-Nil-	Rs.25,000/-
	TOTAL	Rs.43,000/-	Rs.1,06,000/-

17. Accordingly, the Civil Miscellaneous Appeal is allowed in part modifying the impugned award passed by the Tribunal, by enhancing the compensation from Rs.43,000/- to Rs.1,06,000/- with interest @ 7.5% per annum. The 2nd respondent is directed to

deposit the amount within two month from the date of receipt of a copy of this order. On such deposit the appellant is permitted to withdraw half of the decree amount, and the remaining can be withdrawn after expiry of the appeal time. There shall be no order as to costs.

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

G.SHYAM PRASAD, J

23.11.2016
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