

HONOURABLE SRI JUSTICE G.SHYAM PRASAD

M.A.C.M.A.No.91 OF 2006

JUDGMENT:

This appeal is arising out of award dated 30-7-2005 in.O.P.No.526 of 2003 on the file of IV Additional Chief Judge-cum-MACT, City Civil Court, Hyderabad.

The appellant is the petitioner in O.P.No.526 of 2003 who filed a petition under Section 166 of M.V.Act for granting of compensation of Rs.4,00,000/- with interest and costs on account of injuries sustained by her in a motor vehicle accident.

Respondent No.1 is the owner and respondent No.2 is the Insurance Company.

Tribunal on a consideration of evidence of witnesses P.Ws.1 to 3 and documents Exs.A.1 to A.18 awarded compensation of Rs.1,49,661/- with interest at 9% per annum from the date of petition till realization, against the claim of appellant of Rs.4,00,000/-. The appellant injured being aggrieved by the compensation awarded by the tribunal has sought for enhancement of the compensation on the ground that tribunal has not taken into consideration 20% disability for calculation of compensation and awarded the meager amount under other heads.

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

Learned counsel for appellant submitted that the tribunal held rash and negligent driving of the driver of vehicle which was coming behind and dashed two wheeler of the appellant is proved

and the respondents 1 and 2 are jointly and severally liable to pay the compensation to the appellant.

Learned counsel for the appellant further submitted that quantum of compensation awarded by the Tribunal is not in accordance with law governing the Motor Vehicle accident claims.

The observations of the tribunal with regard grant of compensation for the injuries and consideration of Rs.20% disability is as under.

“As already mentioned in the above, since disability cannot be proved and even according to P.W.2 it was about 20%, but it is not in prescribed form nor it is elaborated for the first injury, which is closed segmental fracture of the left tibia and fracture shaft of the left fibula, keeping in view that he has undergone surgery also, a sum of Rs.35,000/- is awarded, which includes disability percentage, if any. For the second injury which is fractured scaphoid in the left wrist, a sum of Rs.20,000/- is awarded..”

As already pointed out by the appellant, tribunal, no doubt, did not award compensation for 20% disability suffered by the appellant. No doubt, the tribunal has referred to 20% disability suffered by the appellant but came to the conclusion that since the disability could not be proved that disability was merged in the award of compensation towards fracture of shaft of left fibula and the expenditure for surgery and contended that compensation awarded was Rs.35,000/- towards that injury. The percentage of disability is also included in the said injury. That is the grievance of the appellant now. The percentage of disability was not considered by the tribunal.

P.W.2 is the Medical Officer who issued the Disability certificate showing percentage of disability as 20%. The objection taken by the tribunal was that disability certificate was not in the prescribed form and disability was not elaborately explained as to how 20% disability was arrived at by P.W.2. The disability was of 20% partial permanent disability. The tribunal observed in page No.7 of its award that when P.W.1 was seen on 24-9-2002, the fractures were healing and he was walking with the help of a stick and brace with some discomfort and he was advised to continue treatment and while his case was reviewed on 2-12-2004, P.W.1 was claiming mild pain on and off and he was walking with a mild limp without any aid, and the knee and ankle movements were satisfactory.

The findings of the tribunal would show that the tribunal was under the impression that since the Medical Officer did not explain as to how the percentage of 20% disability was arrived at by him, the injuries were completely healed. The tribunal thought that there was no need to award compensation for the disability of 20%.

The findings of the tribunal itself allowing the certificate of disability of 20% on the ground that it was not in prescribed form and on that basis he arrived at disability and since the injuries were healed, it need not be considered cannot be accepted. P.W.2 is a Medical Officer. He has given treatment to the appellant. He has issued disability certificate. Ex.P.6 is the comprehensive medical report which disclosed that P.W.1 has suffered 20% disability. There is no reason for the tribunal for not accepting the disability of 20%

suffered by the appellant. The reasons attributed by the tribunal cannot be accepted as it is the medical opinion which is not denied in the cross-examination of this witness. It was not subjected to cross examination. Nothing was elicited in the cross-examination to discard the evidence of P.W.2. Therefore, 20% disability can be taken into consideration in view of the facts and circumstances of this case with regard to injuries received by him in the accident.

The gross salary of the appellant taken into consideration was Rs.8,500/- The tribunal has awarded Rs.51,480/- towards loss of earnings for a period of six months. This fact clearly shows that the appellant had suffered grievous injuries and he could not attend his duties. The Medical Officer evidence coupled with the fact that he could not attend his duties for a period of six months is taken into consideration and also the operation undergone by him and also requirement of the future operation, to be undergone by him, the appellant is entitled for some more compensation.

Tribunal has not properly appreciated evidence on record and arrived at conclusion that there is no sufficient proof for the 20% disability suffered by the appellant. Therefore, there are no valid grounds not to consider the 20% disability suffered by the appellant.

This court in *ULLANKI KANAKA DURGAMMA AND OTHERS v. DANTULURI SURYANARAYANA RAJU AND OTHERS* ⁽¹⁾ observed with regard to pain and suffering of the injured and the disability suffered by him during his life time as under:

“It may not be inopportune to say that in injury cases, the compensation should be more than the death cases as an

¹ 1997 (1) ALT 739

injured person with disability suffers during his remaining span of life more than the dead person who suffers once and for all, however, leaving the sufferance for the survivors, vide Gyan Prakash Bhargava Vs.Baboo Lal (1985 ACJ 661). For the fracture of major bones like bones of the fore arm or the like, normally Rs.15,000/- to 50,000/- may be awarded depending upon the nature of the injuries, the disability and the consequences thereof (vide Golu Vs. Jaswanth Singh (1984 ACJ 155) Om Prakash Sekri Vs.Preetam Singh (1984 ACJ 345) Linkan Jivanji Vaghela Vs.Keshav Bhai (1984 ACJ 446) Suresh Kumar Vs.Pradeep Kumar (1984 ACJ 189) Gyan Prakash Bhargava Vs.Baboo Lal, M.S.Ratya Vs.Gourawwa Channabasappa (1987 ACJ 846) Basavaraj Vs.Sekhar (1987 ACJ 1022))'

Paragraph 12 of judgment: "For medical and incidental expenses, with or without proof, some amount should be awarded as it may not be possible to prove all this Rs.3,000/- in a case like this would suffice the meets or justice and requirements to cover such expenses."

The trial court has rightly relied on the above decision, but however granted relief as above decision awarded compensation but it appears that the compensation awarded by tribunal is not proportionate to the injuries received by the appellant and therefore, the following compensation is awarded to the injuries considering the nature of the injuries and pain and suffering undergone by him and operation undergone by him and future operation undergone by him. It is also pertinent to note that appellant was on leave from 3.4.2002 to 12-8-2002 for 132 days in the first spell and from 13-8-2002 to 30-9-2002 for 49 days towards second spell. Therefore, it is obvious that there is no doubt about loss of earning, pain and suffering and undergone operation and also there is possibility of undergoing future operation.

The total compensation awarded by the tribunal is Rs.1,49,661/- under the following heads on left side and the total compensation enhanced by this court is Rs.1,87,661/- under the following heads on the right side.

Loss of earnings	Rs.51,480/-	Rs.51,480/-
Transport to hospital	Rs.1,000/-	Rs. 3,000/-
Extra nourishment	Rs.3,000/-	Rs 5,000/-
Attendant charges	Rs.1,000/-	Rs. 5,000/-
Medicines & Hospital charges	Rs.23,181/-	Rs.23,181/-
Pain and suffering	Rs.10,000/-	Rs.20,000/-
Both fracture injuries		
With 20% disability	Rs.55,000/-	Rs.65,000/-
For future operation	Rs.5,000/-	Rs.15,000/-
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	Rs.1,49,661/-	Rs.1,87,661/-
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In the result, the appeal is allowed partly awarding compensation of Rs.1,87,661/- with interest at 9% pa., from the date of petition till realization and with proportionate costs.

As a sequel to the disposal of this appeal, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE G.SHYAM PRASAD

Dated.11-11-2016.

Dvs.

HONOURABLE SRI JUSTICE G.SHYAM PRASAD



M.A.C.M.A.No.91 OF 2006

Dated.11-11-2016.

Dvs