

THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

M.A.C.M.A. No. 1668 of 2006

JUDGMENT:

This appeal is arising out of the Award and Decree dated 26.04.2006 passed in O.P.No.2387 of 2003 on the file of the Motor Accident Claims Tribunal-cum-XIII Additional Chief Judge, City Civil Court, at Hyderabad.

2. Brief facts of the case are that on 04.05.2003, at about 11:00 AM, the appellant-claimant, who was a scooter mechanic, was going on motor cycle bearing No.AP-22D-268, as pillion rider, along with his friend from Narayanapet towards Mahaboobnagar and reached near Kakarlapadu village limits. At that time, a DCM van bearing No.AP 22U 1595 coming from Mahaboobnagar towards Narayanapet side, at a high speed, dashed to the motor cycle of the petitioner. Due to the impact, the petitioner suffered bleeding injuries and a fracture injury to his right leg. He was taken to Government Hospital, Mahaboobnagar, and later to SVS Hospital, Enugonda, Mahaboobnagar District, and from there to Bhagwandevis Hospital, Hyderabad, where he was treated as inpatient. Alleging that the accident occurred due to rash and negligent driving by the driver of the van, the claimant filed the claim petition claiming compensation of Rs.2,00,000/- against respondents 1 and 2, the owner and the insurer, of the offending van.

3. The Tribunal awarded compensation of Rs.63,600/- holding respondents 1 and 2 jointly and severally liable to pay the compensation. Being aggrieved by the quantum of compensation and seeking enhancement, the claimant filed this appeal.

4. The point for consideration in this appeal is *whether the appellant is entitled for enhancement of compensation?*

5. Heard the learned counsel for the appellant, and also the counsel for respondent on the previous occasion. Learned counsel for the respondent is not present today.

6. Learned counsel for the appellant contended that the Tribunal has not taken the disability of 40% suffered by the appellant while computing the compensation. It is further submitted that the appellant has obtained a medical certificate from the District Medical Board showing the disability at 70% and, therefore, sought to consider the disability of 70% and award compensation accordingly.

7. The second contention of the learned counsel for the appellant is that the Tribunal has taken the salary of the appellant as Rs.2,500/- per month which is not even the minimum wages earned by a labourer in an unorganized sector. It is submitted that the appellant is a scooter mechanic by profession and he was earning Rs.4,000/- per month by the date of accident and, therefore, requested to consider the same for awarding compensation.

8. Learned counsel for the 2<sup>nd</sup> respondent-Insurance company submitted that the Tribunal awarded adequate compensation and it does not require any interference. It is further submitted that the appellant has not filed any proof with regard to the alleged income of Rs.4,000/- per month. He further submits that there is discrepancy in the disability certificate issued by the medical officer from time to time with regard to the pain and suffering undergone by the appellant. Since Ex.A8-

Estimation for further surgery, was issued two years after the accident, the Tribunal did not take the same into consideration for awarding compensation and the Tribunal has given proper reasoning for not awarding compensation by taking the disability at 40%.

9. Admittedly, the appellant received grievous injuries in the accident and he had undergone treatment. PW2 is the medical officer who treated him in Bhagwandeви Hospital. He came to the witness box and spoke about the treatment he gave to the appellant. Ex.A6 is the medical certificate dated 21.05.2003 issued by the Bhagwandeви Hospital. The Tribunal observed that in Ex.A6, PW2 stated that the wound was healed and asked him to come for review again. Thereafter, the appellant went to the Hospital for removal of implants and, at that time, Discharge Summary was issued which was marked as Ex.A7 dated 21.07.2003. The Tribunal observed that in Ex.A7, it was mentioned that the injury of knee was healed well, and in either Ex.A6 or Ex.A7, it was not mentioned that there was restriction of movements of knee and there is no mention about the disability. The Tribunal further observed that on 16.03.2005, PW2 gave medical certificate (Ex.A8) stating that there is 40% disability and knee replacement surgery is required which may incur an expenditure of Rs.2,00,000/-.

10. The Tribunal observed that PW2 did not mention in his certificate as to whether he has examined the appellant again on a particular date about the assessment of injury. The Tribunal expressed its doubt as to why PW2 estimated the disability at 40% and that if there is any disability suffered by the appellant, the doctor would have mentioned the disability in either Ex.A6 or Ex.A7 on the previous dates and since he has stated

about the disability subsequently, the Tribunal doubted the certificate and did not consider the disability at 40%.

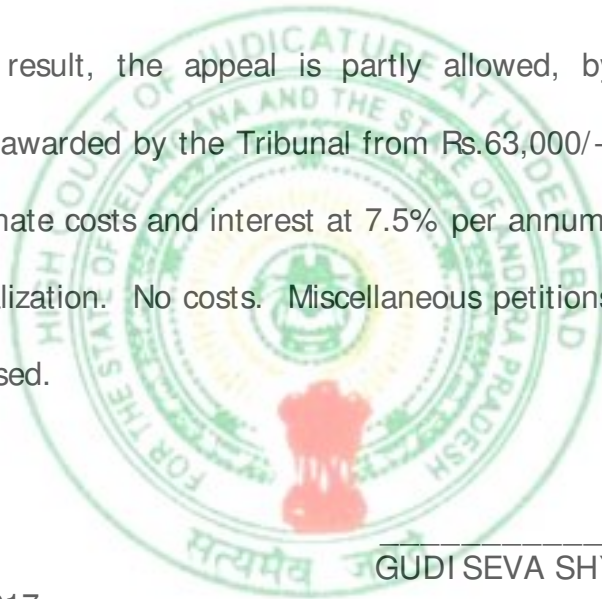
11. In this regard, it is appropriate to refer to the evidence of PW1-appellant and PW2-medical officer. PW1 has filed some documents in his chief evidence affidavit which includes Ex.A8 issued for further surgery for Rs.2,00,000/- which was issued by Bhagwandevi Hospital. The contents of Ex.A8 were spoken by PW2-medical officer in his chief examination. He further stated that the appellant has to undergo joint replacement surgery and that he has partial disability of 40%, but Ex.A8 is not confronted to this witness in his chief examination. However, in the light of the evidence of medical officer, PW2 and the documents filed by the appellant, no doubt, the appellant must have suffered severe injury and stiffness in his knee joint and he might have required to undergo joint replacement surgery. In Ex.A6, it is mentioned by PW2 that the wound healed well and asked the appellant to come for review. In Ex.A7-Discharge Summary, it is mentioned that the appellant attended the same hospital for removal of implants and in that certificate also it was mentioned that injury of the knee was healed. In the year 2005, again the same medical officer issued certificate stating that there was 40% disability and the appellant needs knee replacement surgery and it would cost around Rs.2,00,000/-.

12. The medical officer has been cross-examined before the Tribunal and in his cross-examination, some suggestions were put to this witness and the medical officer has denied the suggestions that the appellant did not suffer 40% disability. It is also pertinent to note that the appellant, during the pendency of appeal, has filed a disability certificate issued by

the Medical Board, which shows that the appellant suffered 70% disability. But no medical officer has been examined from the Medical Board to prove the factum of 70% disability. However, in the light of the evidence that is available on record, since the appellant has suffered grievous injury and he had undergone some treatment under PW2 and he was advised to undergo surgery for knee replacement, some amount can be awarded for knee replacement as advised by PW2.

13. Therefore, on consideration of the medical evidence, an amount of Rs.1,20,000/- is awarded for the knee replacement surgery.

14. In the result, the appeal is partly allowed, by enhancing the compensation awarded by the Tribunal from Rs.63,000/- to Rs.1,83,000/- with proportionate costs and interest at 7.5% per annum from the date of petition till realization. No costs. Miscellaneous petitions, if any pending, shall stand closed.



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GUDI SEVA SHYAM PRASAD, J

03rd March, 2017

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THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD



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