

HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A. No. 856 OF 2010

JUDGMENT:

1. The appellant is the injured in a motor vehicle accident. Having not satisfied with the order passed by the Tribunal, he has preferred this Appeal for enhancement of compensation. The dispute in this Appeal is only with regard to the quantum of compensation. There is no dispute with regard to the liability of the Insurance Company.

2. The Tribunal has awarded compensation of Rs.42,000/- as against the claim of Rs.1,00,000/-.

3. The appellant's contention is threefold. Firstly, it is contended that the compensation awarded by the Tribunal is inadequate. As the Tribunal has not considered the fractures to both bones of right forearm, radius and ulna, head injury and other grievous injuries, the appellant sought for enhancement of compensation. The 2nd contention is that under the head of extra nourishment, inadequate compensation was awarded. The 3rd contention is that the compensation was not awarded under the heads of transportation and attendant charges.

4. Before advertng to the rival contentions, it would be appropriate to extract the amount of compensation awarded by the Tribunal under each head, which is shown below in the tabular form:

Sl.No.	Name of the Head	Compensation awarded
01.	Loss of earnings	Rs.10,000/-
02.	Medical expenses	Rs.20,000/-
03.	Extra nourishment	Rs.2,000/-
04.	Pain and suffering	Rs.10,000/-
TOTAL		Rs.42,000/-

5. The Tribunal has awarded an amount of Rs.10,000/- towards loss of earnings, basing on the nature of injuries suffered by the appellant. The Tribunal has lost sight of the occupation, age, future prospects, nature of injuries, functional disability suffered due to the injuries, either it is temporary or permanent disability, and the occupational hazards caused due to the injuries suffered by him. The Tribunal ought to have taken into consideration the above factors while assessing the compensation.

Loss of earnings for a period of two months:

6. As per the contents of the petition filed before the Tribunal, the appellant was working as Secretary of PACCS, and earning Rs.15,000/- p.m. and also earning income from cultivation. Admittedly, the appellant got examined himself as P.W.1, and he did not examine any witness on his behalf to prove his occupation and salary. He did not even file his salary certificate, though he had stated that he was working as Secretary of PACCS. Therefore, the Tribunal has rightly taken the income of the appellant as Rs.5,000/- p.m. This salary is just above the minimum wage of a labourer working in an unorganized sector. Therefore, there are no reasons forthcoming to interfere with the finding of the Tribunal in arriving at the income of the appellant as Rs.5,000/- p.m.

7. In this regard, awarding of compensation of Rs.10,000/- towards loss of earnings for a period of two months by the Tribunal is quite reasonable and does not require any interference.

Medical expenses:

8. The Tribunal has awarded Rs.20,000/- towards medical expenses. The appellant's contention is that he incurred medical expenses to a tune of Rs.20,100/-. Since the Tribunal has awarded Rs.20,000/- it does not require any interference.

Extra nourishment:

9. The Tribunal has awarded Rs.2,000/- towards extra nourishment. The appellant's contention is that he had suffered grievous injuries; he required extra nourishment for his well-being, and for recovering from the injuries suffered by him.

10. The Tribunal has considered the evidence of P.W.2 - the medical officer, and Ex.A-7 – medical bills, and also placed reliance on Ex.A-6, certificate, issued by consultant physiotherapist, and came to the conclusion that the appellant underwent post operative treatment for 20 days from 10.07.2007 to 01.08.2007. The medical officer charged an amount of Rs.2,000/- for post operative care. The Tribunal has not considered this bill as the medical officer who has treated the appellant was not examined.

11. It is pertinent to note that the appellant has suffered a fracture of right forearm in the accident. He was admitted in the hospital and a surgery was conducted on 11.05.2007, by fixing both bones of right forearm with the nails. Ex.A-3 is the wound certificate

evidencing the nature of injuries suffered by the appellant. The Tribunal has also observed in Para 11 of the judgment that considering the nature of injuries, it would have taken two months for healing of wounds, and he would have taken bed rest for regaining normal health. In spite of this observation by the Tribunal, it failed to grant adequate compensation under the head of extra nourishment. Therefore, in view of the foregoing observation the appellant is awarded an amount of Rs.10,000/- for extra nourishment.

Pain-and-suffering:

12. The Tribunal awarded Rs.10,000/- towards pain-and-suffering. In view of the foregoing reasons, keeping in view the nature of the injuries suffered by the appellant, the amount of compensation of Rs.10,000/- awarded by the Tribunal is enhanced to Rs.20,000/-.

Attendant charges:

13. The Tribunal has observed that the appellant might have taken bed rest for two months because of the injuries suffered by him. The appellant must have definitely in need of an attendant during that period. The Tribunal has not awarded any compensation towards attendant charges. Therefore, an amount of Rs.5,000/- is awarded towards attendant charges.

Post operative treatment and care:

14. The Tribunal has not awarded any amount towards post operative care. There is ample material on record to show that the appellant had undergone operation. He was supposed to take post

operative care and also stated that he incurred an amount of Rs.2,000/- towards post operative care, as stated earlier. Keeping in view of the nature of operation performed by fixing both bones of right forearm with nails, an amount of Rs.2,000/- is awarded under this head.

Transportation:

15. The Tribunal has not awarded any amount towards transportation charges. It may not be possible for the appellant-injured to produce the bills for the expenditure incurred for transportation. The notional expenditure on transportation ought to have been awarded, keeping in view the nature of treatment undergone by him. In this case, he was hospitalized for five days, and he would have taken bed rest for two months, and after operation, he might have attended the hospital many times for regular checkups, and therefore he should have incurred some expenditure. Therefore, an amount of Rs.5,000/- is awarded towards transportation charges.

16. On consideration of the evidence on record, and in view of the foregoing reasons, the compensation awarded by the Tribunal is enhanced as shown in the following tabular form:

Sl.No.	Name of Head	Awarded by Tribunal	Awarded by this Court
01.	Loss of earnings	Rs.10,000/-	Rs.10,000/-
02.	Medical expenses	Rs.20,000/-	Rs.20,000/-
03.	Extra nourishment	Rs.2,000/-	Rs.10,000/-
04.	Pain and suffering	Rs.10,000/-	Rs.20,000/-
05.	Attendant charges	---	Rs.5,000/-
06.	Post operative treatment	---	Rs.2,000/-
07.	Transportation expenses	---	Rs.5,000/-
TOTAL		Rs.42,000/-	Rs.72,000/-

17. Accordingly, the Appeal is allowed in part, enhancing the compensation awarded by the Tribunal from Rs.42,000/- to Rs.72,000/-, with interest at the rate of 9% p.a. from the date of petition till realization. Though the learned standing counsel for the 2nd respondent contended that the Tribunal has awarded excessive rate of interest but it has no basis as it is the discretion of the Tribunal to award any rate of interest and awarding rate of interest also depends upon several factors such as inflation and rate of interest fixed by the Banks etc., Hence, I do not find any ground to reduce the rate of interest awarded by the Tribunal. Respondents 1 and 2 are jointly and severally liable to pay the compensation amount within two (2) months from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the entire amount within one (1) month.

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

G. SHYAM PRASAD, J

Date:14.02.2017.
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HON'BLE SRI JUSTICE G. SHYAM PRASAD

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