

THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

M.A.C.M.A No. 861 of 2010

JUDGMENT:

This appeal is arising out of the Judgment and Decree dated 12.05.2008 in M.V.O.P. No.469 of 2007 on the file of Motor Accident Claims Tribunal-cum-I Additional District Judge, Kurnool.

2. Brief facts of the case are that on 10.10.2006, while the petitioner was travelling as a pillion rider on the motorcycle of one Boya Gokari from Nandyal Check Post to Nannoor village, when they reached near Safa Engineering College on Kurnool-Nandyal Road, at about 11:00 AM, an APSRTC bus bearing No.AP-10Z-7904, driven by its driver in a rash and negligent manner, at high speed, came in opposite direction and dashed to the motorcycle of the petitioner. As a result, the petitioner fell down and sustained grievous fracture injuries. Alleging that the accident occurred due to rash and negligent driving by the driver of the APSRTC bus, the claimant filed the claim petition claiming compensation of Rs.1,50,000/- against the respondent-APSRTC for the injuries suffered by him in the motor vehicle accident.

3. The Tribunal, on consideration of the evidence available on record, awarded compensation of Rs.64,125/- with proportionate costs and interest at 7.5% per annum. Aggrieved by the quantum of compensation, the claimant filed this appeal against the respondent APSRTC for enhancement of compensation.

4. Heard arguments of both sides and perused the material on record.

5. The point for consideration in this appeal is – *Whether the appellant-claimant is entitled to enhancement of compensation?*

6. Learned counsel for the appellant-claimant contended that the Tribunal erred in granting meagre amount of compensation Rs.64,125 as against the claim of appellant Rs.1,50,000/-. It is contended that the Tribunal did not consider Ex.A7-Disability certificate issued by the Medical Board, assessing the disability at 25%, and also not considering Ex.A5-medical bills and not awarding any amount under the Head of medical expenses, incidental charges..

7. Learned counsel for respondent-APSRTC submitted that the Tribunal has taken into consideration the Ex.A3-Wound Certificate and awarded adequate compensation, and the same does not require any interference.

8. The Tribunal examined PWs.1 to 3, to prove the nature of treatment given to PW1 for the injuries suffered by him. PW1 is the injured who has clearly deposed that he has suffered grievous fracture injuries and had taken treatment in Government General Hospital, Kurnool, and spent Rs.50,000/- towards medical and other expenses.

9. The appellant filed Ex.A3-wound certificate, Ex.A4-Discharge card, Ex.A5-bunch of medical bills, and Ex.A6-out patient chit. He has also claimed that he suffered disability and filed Ex.A7-Disability certificate.

10. As per Ex.A3, the petitioner suffered the following injuries:

- “1. Lacerated injury of 1 x 1 cm over right knee, deformity and bleeding present.
2. Lacerated injury of 5 x 1 cm over middle of right leg, red in colour.

3. Lacerated injury of 2 x 1 cm over lower end of right leg exposing bone.”

11. PW2 is working as Assistant Professor of Orthopedics in Government General Hospital, Kurnool. He deposed to the fact that PW1 was admitted in the hospital on 10.10.2006 with fracture of both bones of right leg which is a compound grade-II. The tibia was fixed with V nail and PW1 was discharged on 06.11.2006. He has assessed the disability of PW1 at around 10%.

12. PW3 is another orthopaedic surgeon and he testified about the presence of petitioner before the Medical Board on 26.02.2008 for assessment of disability and on their examination, clinically and radiologically, they assessed the disability at 25% and issued Ex.A2-Disability certificate. Ex.A8 is the X-ray report.

13. The Tribunal without considering the percentage of disability of 25% though there is medical evidence of PW3 and the documents Ex.A7 and Ex.A8 has awarded a sum of Rs.25,000/- towards pain and suffering and future loss of earnings at 34,560/, by taking into consideration the disability at 15%. Therefore, the findings of the Tribunal taking the disability at 15% is incorrect.

14. Therefore, taking the notional income of the appellant who was working as a clerk in a Wine shop, at Rs.3,000/- per month, his notional annual income would come to Rs.36,000/-. As PW1 was 35 years old by the date of accident, the appropriate multiplier as per Sarla Verma v. Delhi Transport Corporation¹, his future earnings would be to the tune

¹ (2009) 6 SCC 121

of Rs.5,76,000/-. The loss of future earnings due to 25% disability would come to Rs.1,44,000/-.

15. As far as pain and suffering for grievous injuries is concerned, the award of Rs.25,000/- is not required to be interfered with.

16. Taking into consideration the medical treatment and Ex.A5-medical bills, an amount of Rs.25,000/- is awarded towards medical expenditure, transport, attendant charges and extra nourishment.

17. Therefore, keeping in view the ratio laid down by the Hon'ble Supreme Court in the case of Reshma Kumari v. Madan Mohan², and Nagappa v. Gurudayal Singh³, the appellant is entitled to just and reasonable compensation, as shown in the tabular format.

Head	Compensation awarded by the Tribunal	Compensation enhanced
Pain & Suffering for grievous injuries	Rs.25,000/-	Rs.25,000/-
Medical Expenses, Transport, attendant charges, extra nourishment	Rs.4,565/-	Rs.25,000/-
Loss of future earnings	Rs.34,560/-	Rs.1,44,000/-
Total	Rs.64,125/-	Rs.1,94,000/-

18. In the result, the appeal is allowed, by modifying the award passed by the Tribunal, enhancing the compensation from Rs.64,125/- to Rs.1,94,000/- with proportionate costs and interest at 7.5% per annum from the date of petition till realisation. The appellant is directed to pay the Court Fee for the amount awarded over and above the original claim, within two months from the date of receipt of a copy of this order. The respondent is directed to deposit the amount within two months from the

² 2013 ACJ 1253 = (2009) 13 SCC 422
³ AIR 2003 SC 674

date of receipt of a copy of this order. On such deposit, the appellant is permitted to withdraw the entire compensation amount.

No costs. Miscellaneous petitions, if any pending shall stand closed.

GUDI SEVA SHYAM PRASAD, J

31st March, 2017

KSM



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