

THE HON'BLE SRI JUSTICE G.SHYAM PRASAD

M.A.C.M.A.No.2366 of 2006

JUDGMENT:

This appeal is arising out of order dated 04.04.2006 in O.P.No.1115 of 2003 on the file of XII Additional Chief Judge (F.T.C), City Civil Court, Hyderabad.

2. The appellant is the petitioner, who filed Original Petition No.1115 of 2003 under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), claiming compensation of Rs.2,00,000/- on account of injuries sustained by him in a motor accident that occurred on 29.01.2003.

3. Brief facts of the case are that, on 29.01.2003, while the appellant was proceeding, along with his friend, Pramod Reddy, from Hyderabad to Nellikoduru on a motorcycle bearing No.AP 15 H 3829, a lorry bearing No.ATU 96, came in a high speed, driven in a rash and negligent manner, dashed against the motorcycle resulting in the appellant sustaining fractures to both bones of left leg and injuries on the other parts of the body. Police registered a case in Crime No.163 of 2003 against the lorry driver.

4. Whereas the appellant claimed compensation of Rs.2.00 lakhs, the Tribunal, on consideration of the evidence, awarded compensation of Rs.87,750/- under various heads. The appellant, being aggrieved by the quantum of compensation, has preferred this appeal for enhancement

under three heads viz. i) pain and suffering; ii) fractures; and iii) academic loss.

5. Learned counsel for the appellant submits that the appellant has filed medical bills to a tune of Rs.1,05,599/-; PW.2, the Medical Officer, testified about incurring medical expenditure of Rs.63,240/- (Rs.38,520/- + Rs.24,720/-); and, even then, the Tribunal has awarded Rs.15,000/- as per Schedule II of the Act, 1988.

6. In fact, the Original Petition was filed under Section 166 of the Act. The Tribunal, without observing that, has followed II Schedule in taking into consideration the income as Rs.15,000/- as shown in the Schedule. It is further submitted that the appellant suffered disability due to injury suffered by him. Therefore, it is contended that the annual income of the petitioner at Rs.15,000/- has to be enhanced, based on the income of the appellant.

7. Merely because the disability certificate has not been issued by the medical board, the disability need not be considered as not proved. As a matter of fact, the Tribunal, with regard to disability at page No.6, observed as under:

“The petitioner in support of his claim, has adduced the evidence of PW.2 and filed Ex.A.14. A perusal of evidence of PW.2 and Ex.A.14 show that the petitioner has sustained disability to an extent of 25% in view of the shortening of his leg and in view of plates still being fixed inside his leg and thus the same is affecting his normal life. As such, this Court relied on the 2nd schedule U/s 163-A of the Motor Vehicles Act which provides the multiplier ‘17’ for the persons aged 22 years with annual income of Rs.15,000/- and if the same is applied to the annual

income of the petitioner i.e. Rs.15,000, it amounts to Rs.2,58,000/- and 25% of the same comes to Rs.64,500/-. But since the petitioner has claimed Rs.25,000/- towards continuing disability, the same is restricted to Rs.25,000/-.”

8. The Tribunal has proceeded to calculate the compensation basing on the Second Schedule of Section 163 of the Act. The Table prescribed in Section 163-A of the Act can be invoked only as a guiding factor while arriving at a ‘just’ compensation. There is no express provision under the Act to the effect that the Table prescribed in Section 163-A of the Act can also be made applicable in cases where the claims are made both under Sections 163-A and 166 of the Act. The scope of inquiry under Sections 163-A and 166 of the Act are explicitly different with each other. Precisely that is the reason why both the provisions have been legislated independent of each other and a Table also had been made under Section 163-A of the Act. In fact, this petition is filed under Section 166 of the Act. Section 166 of the Act deals with ‘Just Compensation’ and even if in the pleadings no specific claim was made under Section 166 of the Act, a party should not be deprived of getting just compensation. In case the claimant is able to make out a case under any provision of law, the Act is a beneficial and welfare legislation.

9. The Tribunal has taken disability at 25% in view of shortening of leg due to multiple fractures and assessed compensation and arrived at Rs.64,500/- but awarded only

Rs.25,000/- stating that the petitioner claimed only Rs.25,000/- under the said head. Therefore, the petitioner is entitled for enhancement of compensation from Rs.25,000/- to Rs.64,500/-. On consideration of the evidence, it is obvious that PW.2 admitted, in his chief examination, that Ex.A.10, medical bills, to a tune of Rs.63,240/- (Rs.38,520/- + Rs.24,720/-). Surprisingly, the Tribunal has not taken into consideration those medical bills and awarded only Rs.15,000/-. Therefore, an amount of Rs.63,240/- (Rs.38,520/- + Rs.24,720/-) is awarded towards medical expenses.

10. Learned counsel for the respondent – Insurance Company submits that the Tribunal has properly appreciated the evidence on record and awarded adequate compensation which does not require any interference.

11. On consideration of the evidence, it is obvious that the compensation awarded by the Tribunal is not adequate. It cannot even be termed as just compensation on consideration of facts and circumstances of the case. This is a case of accident in which a person, aged about 22 years, received two fractures to his left leg. The Tribunal has awarded only Rs.10,000/- for two fractures, perhaps based on Schedule II of the Act. Due to those fractures, the appellant had undergone treatment for about seven months and underwent

three operations. With regard to loss of academic year, the Tribunal observed thus:

“Admittedly, the evidence on record shows that the said loss of academic year of the petitioner is entirely due to the treatment for a period of 7 months after the date of the accident. Hence the Court awards Rs.10,000/- towards loss of academic year to the petitioner. The petitioner claimed Rs.25,000/- towards compensation for continuing disability. The respondents denied the same.”

12. The amount, of Rs.15,000/- towards pain and suffering and for academic loss Rs.15,000/-, is ordered.

13. On consideration of all these facts and the nature of injuries and the treatment undergone by the appellant, the compensation is enhanced as shown in the tabular form.

Compensation granted under the following heads.	Compensation awarded by the Tribunal.	Compensation enhanced by this Court.
Pain and suffering	Rs. 10,000/-	Rs. 15,000/-
Loss of academic year	Rs. 10,000/-	Rs. 15,000/-
Extra nourishment	Rs. 14,000/-	Rs. 14,000/-
Two fractures	--	Rs. 30,000/-
Medical expenses	Rs. 15,000/-	Rs. 63,240 (Rs.38,520 + Rs.24,720)
Disability	Rs. 25,000/-	Rs. 64,500/-
Transport charges	Rs. 5,000/-	Rs. 5,000/-
Loss of income	Rs. 8,750/-	Rs. 8,750/-
Total	Rs. 87,750/-	Rs. 2,15,490/-

14. In the result, the appeal is allowed. The compensation of Rs.87,750/- awarded by the Tribunal is enhanced to

Rs.2,15,490/- with interest at 7.5% p.a. from the date of petition till the date of realization. The appellant shall make payment of deficit court fee within one month from the date of this order on the enhanced amount. Respondents are directed to deposit the amount within two months from the date of the order. On such deposit, the petitioner is permitted to withdraw the entire amount.

15. Miscellaneous petitions pending in this appeal, if any, shall stand closed. There shall be no order as to costs.

Date:18.01.2017
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G.SHYAM PRASAD, J

