

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A.No.1091 of 2010

JUDGMENT:

This appeal is arising out of the Order and Decree dated 15.04.2005 passed in M.V.O.P. No.1101 of 2005 by the Motor Accident Claims Tribunal-cum-I Additional District Judge, Nizamabad. The appellant herein is the claimant in the original petition.

2. Brief facts of the case are that on 06.05.2003, while the claimant was going along with one Angoth Chatru on a TVS Suzuki Motorcycle bearing No.AP 25 C 8959, one tractor bearing No.AP 25B 3184 and trolley bearing No.AAJ 3862 came in the opposite direction driven by its driver in a rash and negligent manner at high speed and dashed against their motorcycle, as a result of which, they fell down on the road and sustained injuries. The claimant received the following grievous injuries in the said accident:

- i. Fracture to nasal bone
- ii. Fracture of 8th and 9th ribs right side
- iii. Hemarthrosis of right knee joint
- iv. Fracture to scaphoid bone right side

3. The claimant has taken treatment as inpatient in Shashank Hospital, Nizamabad, from 06.05.2003 to 12.05.2003 and was discharged on 12.05.2003. Alleging that

the accident occurred due to the rash and negligent driving of the driver of tractor bearing No.AP 25B 3184 and trolley bearing No.AAJ 3862, the claimant filed the claim petition against respondent Nos.1 and 2, the owner and the insurer of the crime tractor and trolley, claiming compensation of Rs.1,00,000/- for the injuries suffered by him in the accident.

4. The Tribunal, on consideration of the evidence available on record, awarded compensation of Rs.24,000/- with proportionate costs and interest at 7.5% per annum. Aggrieved by the quantum of compensation, the claimant filed this appeal against the respondents for enhancement of compensation.

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

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

7. Learned counsel for the appellant-claimant contended that the Tribunal erred in granting meagre amount of compensation i.e., Rs.24,000/- as against the claim of appellant i.e. Rs.1,00,000/-. It is contended that the Tribunal has erred in awarding Rs.19,000/- for the injuries sustained by the appellant though the injuries are grievous in nature, and that the amount of Rs.4,000/- awarded under the head of pain and

suffering is also on the lower side and it is inadequate compensation.

8. Learned counsel for the 2nd respondent – Insurance company submitted that the Tribunal has considered the nature of injuries and awarded adequate compensation and that the total compensation awarded by the Tribunal is in accordance with the second schedule of the MV Act and therefore, it may not require any interference for enhancement.

9. This is a case of motor vehicle accident that occurred on 06.05.2003 while the claimant was going on a TVS Suzuki motorcycle being dashed by a Tractor trolley. The Tribunal held that due to the rash and negligent driving of the tractor trolley by its driver, the accident took place, and awarded compensation of Rs.24,000/- under various heads for the injuries received by the claimant in the accident. It is pertinent to note that the claimant received four grievous injuries and the Tribunal has awarded only 19,000/- for all the injuries suffered by him, which can be enhanced to Rs.60,000/- keeping in view the nature of injuries. Further, the Tribunal has awarded Rs.4,000/- towards pain and suffering and extra nourishment, which is on the lower side in view of the nature of injuries, and so it is enhanced to Rs.15,000/-. The Tribunal has awarded Rs.1,000/- towards transportation charges which is enhanced to Rs.2,000/-.

10. It is submitted by the learned counsel for the appellant that the appellant is an agriculturist and also a vegetable vendor, and even if it is taken into consideration that the appellant is a labourer, he would be earning Rs.3,000/- per month but the Tribunal has not awarded any amount towards loss of earnings. As per the ratio laid down by the Apex Court in *Ramesh Singh v. Satbir Singh*¹, *New India Assurance Company Ltd. v. Smt. Shanti Pathak*², *Oriental Insurance Co. Ltd. v. Syed Ibrahim*³, *New India Assurance Co. Ltd., v. Kalpana (Smt)*⁴, a decision of High Court of Karnataka at Bangalore in *Sri Appayachari v. K. Vadivel* and the *New India Assurance Company Ltd., rep. by its Manager*⁵, and a decision of High Court of Calcutta in *United India Insurance Co. Ltd. v. Shri Buro Mahara*⁶, the notional income of the appellant can be taken as Rs.3,000/- per month. And, therefore, taking into consideration the notional income of the appellant as Rs.3,000/- per month, an amount of Rs.9,000/- is awarded towards loss of earnings for three months.

¹ MANU/SC/7089/2008

² MANU/SC/7776/2007

³ MANU/SC/7915/2007

⁴ (2007) 3 SCC 538

⁵ MANU/KA/3721/2013

⁶ MANU/WB/0139/2015

11. On considering the facts and circumstances of the case, and the arguments of both the learned counsel, the compensation awarded by the Tribunal is enhanced from 24,000/- to Rs.86,000/- with proportionate costs and interest at 7.5% per annum.

12. In the result, the appeal is partly allowed modifying the award passed by the Tribunal by enhancing the compensation from Rs.24,000/- to Rs.86,000/- with proportionate costs and interest at 7.5% per annum from the date of petition till the date of realisation. Rest of the award passed by the Tribunal shall be intact. The 2nd respondent – Insurance company is directed to deposit the amount within two months from the 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.

GUDISEVA SHYAM PRASAD, J

April 21, 2017

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