

THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

M.A.C.M.A No. 875 of 2010

JUDGMENT:

This appeal is arising out of the order dated 12.03.2010 in O.P.No.2170 of 2007 on the file of the Motor Accident Claims Tribunal-cum-XVI Additional Chief Judge-cum-II Additional Metropolitan Sessions Judge, Hyderabad (for short, 'the Tribunal').

2. Brief facts of the case are that on 06.10.2007, the appellant along with others while walking on the left side of the road at about 11:30 AM, reached near Caltex in Bellampally, then a Maxi Van bearing No.AP-01-W-5586 driven by its driver in a rash and negligent manner came on the wrong side of the road, and dashed against the appellant. The appellant suffered fracture injuries to shaft right femur, fracture of left patella, injuries to spinal cord, injuries to head, apart from other multiple injuries all over his body. Immediately, he was shifted to Area Hospital, Bellampally. After first aid, he was shifted to Mancherla Hospital in Adilabad District where he was treated as inpatient, and underwent operation to right shaft femur and cylindrical cast was applied, and ORIF and K-nailing was done. After discharge, he was under treatment periodically.

3. The appellant filed a Claim Petition before the Tribunal seeking compensation of Rs.2,00,000/-, for the injuries sustained by him in the accident. He was aged about 45 years and hale and healthy by the time of accident. He was an employee working in Singareni Collieries and earning Rs.6,000/- per month. He became permanently disabled and

bedridden and suffered total loss of future earnings due to the injuries sustained by him in the accident.

4. On behalf of the appellant, PWs.1 and 2 were examined and Exs.A1 to A12 were marked. On behalf of the 2nd respondent-Insurance company, no oral or documentary evidence was adduced. The trial Court, on consideration of the evidence and material available on record, awarded a compensation of Rs.1,60,000/- as against the claim of Rs.2,00,000/-. Aggrieved by the award, the appellant filed this appeal for enhancement of compensation.

5. The point for consideration is whether the appellant is entitled for enhancement of compensation?

6. Heard learned counsel Sri Kasireddy Jagathpal for the appellant, and the learned Standing Counsel for 2nd respondent-Insurance Company.

7. During the pendency of this appeal, the appellant had filed MACMAMP No.253 of 2017 for enhancing the original claim from Rs.2,00,000/- to Rs.10,00,000/-, which was allowed by Docket Order.

8. The learned counsel for the appellant has submitted that though the appellant had suffered 60% disability, the Tribunal has not awarded adequate compensation. PW2 has issued the Medical Certificate which shows that the appellant has suffered 60% disability, but the Tribunal has not considered the disability certificate.

9. It is submitted by the learned counsel for the appellant that the Medical Certificate issued by a Medical Board is only the authentic document for considering the disability of the injured, is incorrect. The

Motor Vehicles Act, 1988, or the rules do not contemplate issuance of medical certificate by a Medical Board, for any disability.

10. Learned Standing Counsel for Insurance company submits that though the appellant has not produced any medical evidence to prove his claim, except examining PW2, a private medical practitioner. He contends that in the absence of a Medical Certificate issued by the Medical Board, the certificate issued by a private medical practitioner cannot be accepted.

11. In fact, the burden to prove the percentage of disability with cogent medical evidence is on the appellant. The Medical Officer has to come to the witness box to speak about the disability, and he should be subjected to cross-examination. It is contended that PW2 is a private medical practitioner, therefore the medical certificate issued by him cannot be taken into consideration, as there may be exaggeration of percentage of disability in his certificate.

12. It is also contended that the Tribunal has not awarded any compensation under various Heads like loss of amenities, extra nourishment, attendant charges, damage to clothes, vehicle damage, loss of earnings during period of treatment and future loss of earnings. On consideration of rival contentions, the findings revealed are that the appellant has received injuries in the accident and the same are proved by the medical evidence, and the Tribunal held that respondents 1 and 2 are jointly and severally liable for payment of compensation.

13. Therefore, on consideration of the evidence of medical officer, and keeping in view the nature of injuries, the following compensation is awarded under the following Heads as below:

SNo	Head	Amount claimed	Compensation Awarded by the trial Court	Compensation enhanced
1.	Transport to hospital	Rs.10,000/-	Rs.5,000/-	Rs.5,000/-
2.	Pain & Suffering	Rs.50,000/-	Rs.30,000/-	Rs.30,000/-
3.	Medical expenses	Rs.25,000/-	Rs.15,000/-	Rs.15,000/-
4.	Loss of amenities	Rs.15,000/-	Nil	Rs.10,000/-
5.	Extra nourishment	Rs.10,000/-	Nil	Rs.5,000/-
6.	Attendant charges	Rs.36,000/-	Nil	Rs.10,000/-
7.	Damages to clothing	Rs.1,000/-	Nil	Rs.1,000/-
8.	Vehicle damage	Rs.3,000/-	Nil	Rs.1,000/-
9.	Loss of earnings for two months	Rs.20,000/-	Nil	Rs.6,000/- (@ Rs.3,000/- per month)
10.	Loss of future earnings	Rs.1,09,000/-	Rs.70,000/-	Rs.70,000/-
11.	Removal of implants	Nil	Rs.40,000/-	Rs.40,000/-
	Total		Rs.1,60,000/-	Rs.1,93,000/-

14. The Tribunal has awarded Rs.70,000/- for loss of future earnings and Rs.40,000/- towards removal of implants. The Tribunal has rightly awarded under these two Heads, even without there being any claim, and therefore, the same does require any interference.

15. Accordingly, the appeal is allowed by modifying the compensation awarded by the trial Court from Rs.1,60,000/- to Rs.1,93,000/-, with interest at 7.5% and proportionate costs from the date of petition till the date of realization. No costs. Pending miscellaneous petitions, if any, shall stand closed.

GUDI SEVA SHYAM PRASAD, J

Dated: 17.02.2017

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THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD



M.A.C.M.A No. 875 of 2010

17TH February, 2017

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