

HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A. No. 376 OF 2006

JUDGMENT:

1. This Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the act').

2. This Appeal is arising out of the award, dated 12.09.2005, in O.P. No.776 of 2004 on the file the Chairman, Motor Vehicles Accidents Claims Tribunal-cum-IV Additional District Judge at Warangal (for short, 'the Tribunal').

3. Appellant herein is the petitioner-injured in O.P. No.776 of 2004. He filed a petition before the Tribunal, under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), claiming compensation of Rs.2,00,000/- on account of the injuries sustained by him in a motor vehicle accident occurred on 09.01.2004. Respondent No.1 is the owner, who insured the Tata Indica Car bearing No.AP 9 AF4158 with the 2nd and 3rd respondents.

4. The brief facts of the petition are that, on 09.01.2004 at about 07:00 p.m., when the appellant along with his friend went to Kakatiya University Campus, Hanamkonda and, while returning on the Hero Honda motorcycle bearing No.AP 36 K 5284, reached near Muduchintal, Naim Nagar, Hanamkonda, the crime vehicle being driven by its driver at high speed, in a rash and negligent manner, dashed against the motorcycle of the appellant. As a result of which both the appellant and his friend fell down and received several injuries. Immediately, the appellant was taken to

Jaya Hospital, Hanamkonda, where he was treated as inpatient from 09.01.2004 to 12.01.2004. The Hanamkonda P.S. registered a case in Crime No.15/T-19 of 2004 against the driver of the car. Hence, the claim.

5. Respondent No.1, owner of the crime vehicle, remained *ex parte* before the Tribunal.

6. Respondent No.3 filed counter, which was adopted by the 2nd respondent, denying the claim of the appellant.

7. The Tribunal, after framing the issues and, on consideration of the pleadings and evidence of the witnesses, P.Ws.1 to 4 and the documents Exs.A-1 to A-18 and Ex.B-1, awarded a compensation of Rs.46,250/-, as against his claim of Rs.2,00,000/-, with proportionate costs and interest at the rate of 7.5% p.a. from the date of petition till realization, holding the respondents 1 and 2 jointly and severally liable to pay the compensation.

8. Being aggrieved by the quantum of compensation, the appellant preferred the instant Appeal seeking enhancement of the compensation.

9. Heard the arguments of Mr. A. Prabhakara Rao, learned counsel for the appellant, and Mr. P. Harinath Gupta, learned standing counsel for the 3rd respondent-insurance company.

10. The point for consideration in this matter is whether there are sufficient grounds for enhancement of compensation awarded by the Tribunal?

11. Learned counsel for the appellant submits that the Tribunal has not considered the functional disability, which causes obstruction in the day to day life of the appellant. The appellant has suffered stiffness because of the injuries sustained by him in the accident. It is further submitted that amounts awarded under the heads of transportation and pain and suffering are very meager and, therefore, sought for enhancement.

12. Learned standing counsel appearing for the 3rd respondent-insurance company contends that the Tribunal, has properly appreciated the evidence on record and, awarded reasonable compensation, for the three simple injuries, and one grievous injury, suffered by the appellant. The appellant has regained fitness for attending his regular duties; therefore, there is no need to interfere, with impugned order of the Tribunal, for enhancement of compensation.

Injuries, disabilities, loss of earnings and future prospects:

13. The Tribunal in Paragraphs 12 to 15 of its award observed as follows:

“12. P.W.2 had seen the petitioner for the first time soon after the accident on 09.01.2004, when he was admitted at 07:38 p.m. in Jaya Hospital, Hanamkonda. The injuries observed on P.W.1 by P.W.2 were:

1. A fracture of patella on the left side,
2. A contusion on the left foot,
3. A contusion at left ankle joint,
4. A closed head injury,
5. An abrasion of 2 c.m. x 2 c.m. on the left foot.

13. According to P.W.2, injury No.1 is grievous in nature and injuries 2 to 5 are simple in nature. The petitioner was treated conservatively by applying POP and he was attended by a Neurosurgeon in respect of his head injury in the above hospital. In cross-examination, P.W.2 stated that the petitioner was fit to be discharged and he did not attend Jaya Hospital, Hanamkonda for follow up.

14. According to the petitioner, he had further treatment in the hospital in Sri Ganesh Orthopedic Hospital, Hanamkonda, attended by Dr. P. Surender Reddy (P.W.4). The evidence of P.W.4 is to the effect that the petitioner was treated in Jaya Hospital, Hanamkonda, in the first instance and later-on, he was treated in his hospital. According to P.W.4, the petitioner was admitted in his hospital on 13.01.2004. He referred to the same injuries stated by P.W.2 in his evidence. According to P.W.4, the petitioner had a surgery on 14.01.2004 for fracture at patella with K-Wire tension band wiring and was discharged on 28.01.2004. He identified Exs.A-12 to A.14 that they belonged to his hospital and prescribed by him. According to him, the petitioner required one more operation for removal of implants. He produced Ex.A.18 case sheet in this context, maintained by his hospital, relating to the petitioner.

15. Unfortunately in this case, the treatment given out by P.W.4 to P.W.1 has been brought out only in the course of evidence. In the petition, in column No.26, it is stated by the petitioner that he was treated in Jaya Hospital, Hanamkonda, and he had operation in the same hospital. He did not refer to the fact that he was treated by P.W.4 or performed a surgery of his left patella, placing implants or in respect of nature of treatment, he had, in the hospital of P.W.4. It is not as though, the petition was filed prior to the admission of the petitioner in the hospital of P.W.4, for the above treatment. Therefore, when the pleadings set out by the petitioner in his petition is not referring the fact that the petitioner had treatment in the hospital of P.W.4, it cannot be stated that such evidence let-in by him can be looked into. Added to it, P.W.4 has not been cited as a witness nor

he was referred as an Orthopedic Surgeon who attended on P.W.1 later on, in the course of treatment, in the charge sheet filed by the police, in respect of the same accident, as per Ex.A.3. Despite the fact that P.W.4 identified Exs.A.12 to A.14 and also produced alleged case sheet supposed to have been maintained by him relating to the treatment of the petitioner and Ex.A.18 in the course of evidence such evidence cannot be looked into nor can be relied on for the reasons stated above. It is not explained as to why, the petitioner had omitted to refer such treatment in his petition if really he had such treatment in the hospital of P.W.4 and he had a surgery, as, it would not have prevented him from referring the same in his petition. Thus, the improvement brought out in the course of enquiry, in this respect, makes such version of the petitioner and also that of P.W.4, a suspect. Therefore, the evidence of P.W.4 and Exs.A.14 and A.18 have to be rejected from consideration.”

14. The Tribunal, after taking into consideration the evidence of medical officer - P.W.2, and discarding the evidence of the medical officer - P.W.4 without any plausible explanation, awarded the following compensation, which is shown in the tabular form:

Sl.No.	Name of the Head	Compensation awarded
01.	Loss of earnings	Rs.2,000/-
02.	Medical expenses	Rs.10,000/-
03.	Transportation	Rs.250/-
04.	Pain and suffering	Rs.3,000/-
05.	Grievous and simple injuries	Rs.31,000/-
TOTAL		Rs.46,250/-

15. The Tribunal, discussing about the evidence of medical officers P.Ws.2 to 4, held as follows in Paragraphs 24 and 25 of its award:

“24. The petitioner has claimed Rs.68,000/- for continuing and permanent disability. The petitioner has produced

Ex.A.9 the so called disability certificate and relied on the evidence of P.W.3 in this context. It is to the effect that the petitioner suffered post traumatic amputation of left knee. It is not a case of amputation and it is admitted by P.W.3 in his cross-examination. According to him, the petitioner suffered on account of post traumatic stiffness of left knee and the disability is permanent and partial. Such disability is not referred to in Ex.A.9 in column No.6. Added to it, Ex.A.9 bears a caption that it is not for judicial purpose. The caption itself makes Ex.A.9 a suspect. The version of P.W.3 in the same context has to be rejected from consideration and the nature of disability stated in Ex.A.9 itself makes out that it is a false certificate issued by P.W.3. 40% disability given out in Ex.A.9 said to have been suffered by the petitioner and whereas P.W.4 gave out that, it is 30% disability. According to P.W.2, he was not in a position to say whether, the petitioner suffered any permanent disability or not.

25. Thus, from the evidence produced by the petitioner, there is any amount of divergence and difference brought out in respect of extent of disability suffered by him. Thus, there is no acceptable proof relating to permanent partial disability suffered by the petitioner. His interested testimony in this respect cannot be relied on.....”

16. From the evidence extracted above, it seems that the Tribunal has not properly appreciated the evidence of P.W.3 in correct perspective. No doubt, there is discrepancy in the percentage of disability stated by the medical officers. The Tribunal disbelieved the evidence of P.W.3, who issued Ex.A-9 disability certificate opining the disability suffered by the appellant as 40% since P.W.4 opined the disability suffered as 30% and P.W.2 opined that he was not in a position to say whether the disability suffered was permanent or partial. It is pertinent to note that Ex.A-9 was not for judicial purpose. Hence, keeping in view of the nature of injuries

suffered by P.W.1 and the evidence of P.Ws.2 to 4 read together, it can be presumed that the appellant might have suffered some disability. Since there is discrepancy in the percentage of disability shown in Ex.A-9 issued by the District Medical Board, Warangal and about authenticity of Ex.A-9, some amount can be granted towards loss of earnings.

17. The Tribunal has not given any finding with regard to the monthly income of the appellant. The appellant was proprietor of 'Icon Solutions, Internet and Email' situated at Kishanpura, Hanamkonda. He also claimed that he used to maintain computers on rent and undertake sale and services of computers and earn more than Rs.10,000/- p.m. The Tribunal did not believe the income of the appellant as Rs.10,000/- p.m. but awarded an amount of Rs.2,000/- towards loss of earnings, which finding of the Tribunal does not appear to be reasonable. If we take into consideration the income of an unskilled labourer these days, as per the provisions of the Minimum Wages Act, 1948, and also in view of the principles laid down by the Apex Court in *Ramesh Singh Vs. Satbir Singh*¹, *New India Assurance Company Limited Vs. Smt. Shanti Pathak*², *Oriental Insurance Company Limited Vs. Syed Ibrahim*³, *New India Assurance Company Limited Vs. Smt. Kalpana*⁴, a decision of High Court of Karnataka at Bangalore in *Sri Appayachari Vs. K. Vadivel and the New India Assurance Company Limited, Rep. by its*

¹ MANU/SC/7089/2008

² MANU/SC/7776/2007

³ MANU/SC/7915/2007

⁴ (2007) 3 SCC 538

*Manager*⁵ and a decision of High Court of Calcutta in *United India Insurance Company Limited Vs. Shri Buro Mahara*⁶, income of the appellant in the instant case can be taken as Rs.3,000/- p.m. and, accordingly, his notional annual income would come to Rs.36,000/-.

18. Admittedly, the appellant has suffered one grievous injury on his left side of patella, and four simple injuries. Except the 1st injury, the fracture of patella, other injuries are simple in nature. The occupation of appellant was computer business. He would have suffered loss of earnings for three (3) months at the rate of Rs.3,000/- p.m. and an amount of Rs.9,000/- is awarded towards loss of earnings. The Tribunal has awarded Rs.20,000/- towards disability. On consideration of the nature of grievous injury, and by taking into consideration of loss of future earnings, the amount of Rs.20,000/- can be enhanced to Rs.75,000/-

19. Considering the material available on record, the following tabular form shows the amount of compensation awarded by the Tribunal and enhanced by this Court, under some heads:

S.No.	Name of Head	Awarded by Tribunal	Awarded by this Court
01.	Medical expenditure	Rs.10,000/-	Rs.10,000/-
02.	Transportation	Rs.250/-	Rs.2,000/-
03.	Damage to clothes	--	Rs.1,000/-
04.	Pain and suffering	Rs.3,000/-	Rs.15,000/-
05.	Permanent disability and fractures	Rs.20,000	Rs.75,000/-
06.	Closed head injury	Rs.5,000/-	Rs.15,000/-
07.	Simple injuries	Rs.4,000/-	Rs.10,000/-
08.	Loss of earnings	Rs.2,000/-	Rs.9,000/-
TOTAL		Rs.46,250/-	Rs.1,37,000/-

⁵ MANU/KA/3721/2013

⁶ MANU/WB/0139/2015

20. Accordingly, the Appeal is allowed in part, enhancing the compensation awarded by the Tribunal from Rs.46,250/- to Rs.1,37,000/-, with subsequent interest at the rate of 7.5% p.a. from the date of petition till realization making respondents 1 and 2 jointly and severally liable to pay the same. The 2nd respondent is directed to deposit the compensation awarded within one (1) month from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the entire amount.

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

Date: 03.02.2017.
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G. SHYAM PRASAD, J



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