

HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A. No. 544 OF 2006

JUDGMENT:

1. This Motor Accident Civil Miscellaneous Appeal is arising out of the order, dated 06.12.2005 passed in Original Petition No.2515 of 2003 on the file of the Chairman, Motor Accident Claims Tribunal – cum – V Additional Metropolitan Sessions Judge and XIX Additional Chief Judge, Hyderabad (for short, 'the Tribunal').

2. This is a claimant's appeal. The appellant herein is the petitioner in Original Petition No.2515 of 2003. He filed a petition under Section 163-A and Section 166 of the Motor Vehicles Act, 1988, (for short, 'the Act') claiming compensation of Rs.1,50,000/- against respondents 1 and 2, i.e., the owner and the insurer of the motor vehicle involved in the accident.

3. The Tribunal, on consideration of the evidence of P.W.1, the injured appellant and P.W.2, the Medical Officer who treated the appellant and documents marked as Exs.A.1 to A.15 on behalf of the appellant and Ex.B.1 marked on behalf of the respondent No.2, has awarded a compensation of Rs.32,500/-. The appellant, being aggrieved by the quantum of compensation, has preferred this appeal for enhancement.

4. Heard the arguments of Sri C.Vikram Chandra, the learned counsel for the appellant and Sri V.Sambasiva Rao, the learned

counsel appearing for the 2nd respondent – United India Insurance Company Limited.

5. The learned counsel for the appellant would submit that though the Tribunal held that the appellant suffered 25% disability, it has awarded a very meager amount and therefore, sought for enhancement of the compensation.

6. The learned counsel appearing for the respondent No.2 contended that the Tribunal, on consideration of the evidence on record, has granted just and reasonable compensation which do not require any interference.

7. The point for consideration in this matter is whether there are any sufficient grounds for enhancement of compensation in this appeal?

8. Paragraph No.7 of the impugned Award reads as under:-

“PW2 Dr.B.Arun Kumar, deposed that he treated Pw1 at Yashoda Hospital, at Somajiguda Branch and Pw1 was admitted in Yashoda hospital on 7-8-2002 and he sustained fracture of right thigh bone extending into knee joint. He was operated for the fracture of right thigh bone by plates and screws. Pw1 was discharged from the hospital on 23-8-2002. Pw1 was coming for follow up treatment for long time for physiotherapy and consultation. Ex.A4 to A9 are the certificates issued by him opining that the injuries sustained by Pw1 are greivous in nature. He further deposed that Pw1 was having 25% of permanent partial disability because of

restricted knee movement and onset of early oste arthritis because of this cause of injury he will not be able to sit on floor and run and walk long distance and he is having some difficulty in driving the two wheeler vehicle. Ex.A10 is the medical bills for the medicines purchased by Pw1. Ex.A5 is the disability certificate issued by him to Pw1. He further deposed that Pw1 has to undergo further operations to remove the rod and for that he has to incur Rs.30,000/-“

9. A perusal of the above paragraph would reveal that P.W.2 is Dr.B.Aruna Kumar, who treated P.W.1, the appellant. He deposed that P.W.1 has suffered 25% permanent disability because of the restricted knee movements and onset of early oste arthritis and because of this injury, the appellant will not be in a position to sit on the floor and run and walk for long distances and he is having some difficulty in driving the two-wheeler. Ex.A.5 is the Disability Certificate issued by PW.2. The Tribunal having observed that P.W.1 suffered 25% disability, has not awarded compensation adequately. Admittedly, the appellant is a police constable aged about 40 years by the date of accident. It is obvious that a police constable is required to run, sit, stand and do all sorts of physical movements. The Medical Officer clearly stated that there is restriction of movements because of the injuries suffered by the appellant and that he will not be in a position to sit on the floor and he cannot run or walk long distances and he cannot drive a two-wheeler. Though it is a partial permanent disability, it amounts to serious functional disability in view of the fact that the appellant is a

police constable by profession. The Tribunal has not taken the salary of the appellant of Rs.8,266/- per month into consideration for the purpose of calculation of compensation in this case. The Tribunal has awarded only an imaginary notional compensation to the appellant without placing reliance on the facts before it. The Tribunal has granted a compensation of Rs.32,500/- to the appellant under various heads, which is shown below in the tabular form:

Sl.No.	Name of the Head	Compensation awarded by the Tribunal
01.	Partial disability	Rs.20,000/-
02.	Medical expenditure	Rs.10,000/-
03.	Extra Nourishment and medicines	Rs.1,500/-
04.	Pain and suffering	Rs.500/-
05.	Transportation charges	Rs.500/-
TOTAL		Rs.32,500/ -

10. On consideration of the facts and circumstances of this case, as the petitioner is a Constable by profession, and due to the injuries suffered by him in the accident, he has suffered disability which may hamper progress in his profession as Constable, the following compensation is awarded.

Sl.No.	Name of Head	Compensation Awarded by Tribunal	Compensation Awarded by this Court
01.	Partial disability	Rs.20,000/-	Rs.50,000/-
02.	Medical expenditure	Rs.10,000/-	Rs.10,000/-
03.	Extra nourishment and medicines	Rs.1,500/-	Rs.10,000/-
04.	Pain and suffering	Rs.500/-	Rs.10,000/-
05.	Transport charges	Rs.500/-	Rs.2,000/-
06.	Loss of earnings	--	Rs.8,266/-
TOTAL		Rs.32,500/ -	Rs.90,266/ -

11. Accordingly, the Civil Miscellaneous Appeal is allowed in part modifying the impugned award passed by the Tribunal, by enhancing the compensation from Rs.32,500/- to Rs.90,266/- with subsequent interest @ 7.5% per annum from the date of petition till the realisation. The respondents are directed to deposit the amount within two months from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw half of the decretal amount, and the remaining amount can be withdrawn after expiry of the appeal time. There shall be no order as to costs.

12. As a sequel, miscellaneous petitions, if any, pending shall stand closed.

Date: 02.02.2017
BVV

G.SHYAM PRASAD, J

