

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

C.M.A. No. 2292 of 2004

JUDGMENT:

This appeal is filed against the order, dated 05.03.2004, in O.P.No.253 of 2001, passed by the learned Additional Special Judge For S.P.E. and ACB Cases-cum-V Additional Chief Judge, City Civil Court, Hyderabad.

The facts of the case are not in dispute. The case of the appellant is that he was working as Salesman in Hindustan Lever Limited. On 18.11.2000, while he was returning from his job on his Scooter bearing No. AP 9A 4687, a lorry bearing No.ADT 2468 came from behind and hit his Scooter, as a result of which, he received head injury and fractures. Hence, he filed the above said O.P. claiming a sum of Rs.1,00,000/- towards compensation.

Respondent No.1, owner of the lorry, remained *ex parte*. Respondent No.2, insurer of the lorry, filed its counter denying all the averments made by the petitioner in O.P.

The Court below, after considering the oral and documentary evidence, held that the accident occurred on account of rash and negligent driving of the driver of the lorry and in the process, the appellant suffered injuries and that the respondents are jointly and severally liable to pay the compensation. The Court below by taking the salary of the appellant at Rs.2,000/- per month, awarded a sum of Rs.4,000/- towards loss of earnings for two months, a sum of Rs.9,410/-

towards medical expenses based on Ex.A6, Rs.7,000/- for the grievous injury and simple injuries and a sum of Rs.1,500/- towards transport expenditure and extra-nourishment, in total, Rs.21,910/- towards compensation to the appellant. Aggrieved by the same, the appellant filed this appeal seeking enhancement of compensation.

Heard learned counsel for the appellant and learned Standing Counsel for respondent No.2.

A perusal of the material on record discloses that the appellant sustained three injuries viz., (1) multiple abrasions on right shoulder (2) laceration over Occipital region about 4" sutured and (3) X ray of chest shows injuries on 4th, 5th, 6th and 7th ribs. After taking into consideration the expenditure incurred and based on the bills submitted, a sum of Rs.9,410/- was awarded towards medical expenditure, Rs.7,000/- for grievous injury as well as simple injuries and Rs.1,500/- towards transport expenditure and extra-nourishment, by the Court below. Further, a perusal of the order under appeal discloses that the Court below considered the matter in a pragmatic view and granted compensation reasonably. However, for enhancement of compensation awarded under the above heads, there is no other material placed before this Court by the learned counsel for the appellant. Further, Ex.A8-salary certificate, which was issued by the Hindustan Lever Limited, shows that the appellant was drawing a sum of Rs.3,500/- per month. The same was not taken into consideration

by the Court below rightly as the appellant had failed to examine the employer or some other official connected with the agency.

It may be noted that as per G.O.Ms.No.33, dated 06.03.1991, issued by the Government of Andhra Pradesh, the minimum wage at the relevant point of time for a Salesman to be paid was Rs.1,015/- in addition to Valuable Dearness Allowance at Rs.1,460.50ps. This comes to Rs.2,475.50 ps., if rounded off, to Rs.2,500/-. The Court below accepted the evidence that the appellant was, in fact, working as a Salesman. The Court can take judicial note of the fact that apart from wages, the salesmen are always paid certain amount of commission based on the sales. In those circumstances, notwithstanding the fact that there is no specific evidence with respect to the same, a reasonable sum of Rs.500/- can be added to the earnings on account of notional sales commission. Then, it would work out to Rs.3,000/- per month. On the ground that the appellant lost earnings for two months, the Court below had awarded Rs.4,000/- towards loss of earnings. The same needs to be enhanced to Rs.6,000/-.

In those circumstances, the order passed by the Court below is varied to the above said extent. The enhanced amount of Rs.2,000/- shall be paid by respondent No.2 through crossed cheque/demand draft sent through Registered Post to the appellant, within a period of six weeks from the date of receipt of a copy of this order. The enhanced amount shall carry interest at

the rate of 9% per annum, from the date of accident till the date of deposit of the same.

The appeal is accordingly allowed in part. There shall be no order as to costs.

Miscellaneous petitions, if any pending shall stand disposed of.

CHALLA KODANDA RAM, J

Dt:20.12.2017

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