

HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A. No. 828 OF 2010

JUDGMENT:

1. This Appeal is arising out of the award, dated 26.02.2010, in O.P. No.970 of 2007, on the file the Chairman, Motor Vehicles Accidents Claims Tribunal-cum-Judge, Family Court-cum-Additional District and Sessions Judge, Nalgonda (for short, 'the Tribunal').

2. Appellant is the petitioner in Original Petition No.970 of 2007 filed under Section 166 read with Section 140 of the Motor Vehicles Act, 1988 (for short, 'the Act'), claiming compensation of Rs.1,20,000/-, on account of the injuries sustained by him in a motor vehicle accident occurred on 13.11.2006, against the respondent.

3. The Tribunal, on consideration of the pleadings and evidence of the witnesses P.Ws.1 and 2 and the documents Exs.A-1 to A-10, passed an Award against the respondent granting compensation of Rs.25,000/- with proportionate costs and interest at the rate of 7.5%p.a. from the date of petition till realization.

4. Being aggrieved by the quantum of compensation, the appellant preferred the present Appeal seeking enhancement of the compensation.

5. Heard arguments of Mr. M. Madhava Reddy, learned counsel for the appellant, and Ms. Vladimeer Khatoon, learned counsel, representing A. Ravi Babu, learned standing counsel for the respondent-corporation.

6. The point for consideration in this matter is, whether there are sufficient grounds for enhancement of the compensation?

7. This is an appeal for enhancement of compensation. Admittedly, the appellant is the injured in a motor vehicle accident occurred on 13.11.2006. He claimed compensation of Rs.1,20,000/- against the respondent. The Tribunal awarded an amount of Rs.25,000/- on all counts.

8. Appellant's submissions are that the Tribunal granted inadequate compensation without considering the gravity of his injuries. The appellant suffered two grievous injuries; a commuted fracture of shaft of right femur and a head injury. The appellant has to undergo a surgery in future for removal of implants. He has suffered permanent disability. He filed Ex.A-5 – orthopaedically handicapped certificate, issued by the District Medical Board, Nalgonda. The Tribunal has not considered the said certificate. The Tribunal has not awarded any compensation under the head of permanent disability. The certificate was issued by the District Medical Board showing 20% disability. The Tribunal did not consider the certificate as the medical officer who issued Ex.A-5 was not examined. In fact, P.W.2, Dr. P. Raju, Orthopaedic Surgeon, who treated the appellant, testified about the admission of the appellant with head injury and with a compound fracture of right femur and conducting an operation on him with interlocking nail. He further stated that the appellant was admitted in the hospital on 14.11.2006 and was discharged on 24.11.2016. The Tribunal, in spite of this evidence of P.W.2, medical officer, has awarded a meager

amount of only Rs.15,000/- for one grievous injury and Rs.10,000/- for medical expenses. Therefore, it is submitted that the compensation awarded by the Tribunal is inadequate and requires to be enhanced.

9. There is some force in the submission raised by the learned counsel for the appellant. As a matter of fact, the Tribunal has to keep in mind the gravity of the injuries, nature of treatment undergone, occupation of the appellant-injured, loss of earnings past and future, future medical expenses, probable medical expenditure already undergone and the incidental expenses, if any. In this case, the Tribunal has not considered all the above aspects and awarded a meager amount of Rs.10,000/- towards medical expenses and Rs.15,000/- towards one grievous injury. It is obvious that the Tribunal had lost sight of the evidence of P.W.2., medical officer, who treated the appellant. He has treated the appellant-injured in the hospital and conducted operation with interlocking nail for the fracture of femur. Therefore, the appellant is entitled for enhancement of compensation for the two fractures suffered by him, at the rate of Rs.25,000/- for each fracture, which comes to Rs.50,000/-. Insofar as the amount of compensation awarded by the Tribunal towards medical expenses of Rs.10,000/- is concerned, it needs no interference and the same is retained.

10. The Tribunal has not considered the certificate, Ex.A-5, issued by the District Medical Board, wherein the disability was assessed at 20%, due to the injuries suffered by the appellant. No doubt, the appellant ought to have examined one of the doctors from the

Medical Board to prove the disability certificate issued by it. As the medical officer from the Medical Board was not examined, the Tribunal has rightly not taken the disability certificate into consideration for the purpose of awarding compensation. The Tribunal cannot be found fault for not awarding compensation by taking into consideration the certificate, which is showing 20% disability. However, keeping in view of the nature of injuries suffered by the appellant and the treatment undergone by him, the Tribunal ought to have awarded adequate compensation under various other heads, in order to grant just compensation. P.W.2 has also stated that the appellant requires to undergo one more surgery which may cost an amount of Rs.18,000/- and medicines which may cost an amount of Rs.8,000/-.

11. On consideration of all these facts, an amount of Rs.20,000/- is awarded towards post operative care expenses. The Tribunal has not granted any amount towards loss of earnings. The appellant might have suffered for about three months without any occupation due to the pain and suffering undergone by him. Therefore, Rs.9,000/- is awarded towards loss of earnings, for a period of three months at the rate of Rs.3,000/- p.m. Though the handicapped certificate Ex.A-5 was not taken into consideration by the Tribunal, for assessing the disability, the appellant would have suffered some disability, which may hamper progress in his occupation, throughout his life because of the nature of injuries suffered by him. Therefore, Rs.20,000/- is awarded towards future loss of earnings. The Tribunal has not awarded any amount towards

attendant charges, transportation and extra nourishment.

Therefore, an amount of Rs.20,000/- is awarded under this head.

12. The following is the tabular form showing the amount of compensation awarded by the Tribunal and enhanced by this Court, if any, under each head:

Sl.No.	Name of Head	Awarded by Tribunal	Awarded by this Court
01.	Grievous injuries	Rs.15,000/-	Rs.50,000/-
02.	Medical expenditure	Rs.10,000/-	Rs.10,000/-
03.	Post operative care expenses	---	Rs.20,000/-
04.	Loss of earnings (past and future)	---	Rs.29,000/-
05.	Attendant charges, transportation and extra nourishment	---	Rs.20,000/-
TOTAL		Rs.25,000/-	Rs.1,29,000/-

13. From the above tabular form, it is clear that the appellant is entitled to the compensation more than claimed, in view of the principle laid down by the Apex Court in *Nagappa Vs. Gurudayal Singh*¹, wherein it was held that since the provisions of the Act have no restriction to award the compensation more than claimed in appropriate cases, where from the evidence brought on record, the Courts feel that the claimant is entitled to get more compensation than claimed, the Courts may award such compensation but the only embargo is that it should be 'just compensation, but should neither be arbitrary, fanciful nor unjustifiable from the evidence'.

¹ 2003 (2) SCC 274

14. Accordingly, with the above observation, the Appeal is allowed, modifying the compensation awarded by the Tribunal from Rs.25,000/- to Rs.1,29,000/-, keeping in tact the rate of interest awarded by the Tribunal. However, the appellant is directed to pay the deficit court fee before the Tribunal within a period of one (1) month from the date of receipt of a copy of this judgment. Respondent is directed to deposit the awarded amount within two (2) months from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the entire compensation amount.

15. As a sequel, pending miscellaneous petitions, if any, shall stand closed as infructuous. No order as to costs.

Date: 17.02.2017.
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G. SHYAM PRASAD, J



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