

HON'BLE MS JUSTICE J.UMA DEVI

M.A.C.M.A.No.3001 of 2005

JUDGMENT:

1. The claimant has come up with this appeal being not satisfied with the compensation amount awarded by the II-Additional District Judge, Karimnagar at Jagtial, in O.P.No.130 of 2004 dated 09.08.2005.

2. On 18.11.2000 at about 8.00 P.M. while the appellant-claimant along with another, by name Chetti Mallesh, was proceeding on his Scooter bearing No. AP 15 B 6880, when they reached Shimla Dhaba, a lorry bearing No. GJ 3V 8119, driven by 1st respondent, belonging to the 2nd respondent, and insured with the 3rd respondent, came in the opposite direction with high speed in a rash and negligent manner and dashed against his Scooter, as a result of which, he sustained multiple fractures and other injuries. Soon after the accident, the appellant-claimant was shifted to Government Area Hospital, Jagtial and from there to Apollo Hospital, Hyderabad for treatment. He also took treatment in Nizam Institute of Medical Sciences, Hyderabad for 21 days and incurred huge expenditure for his treatment. Therefore, he laid a claim before the Tribunal seeking compensation of Rs.2,50,000/-.

3. The 3rd respondent-Insurance Company resisted the claim by filing counter, *inter alia*, contending that the driver of the lorry was not having driving license as on the date of accident and hence the Insurance Company is not liable to pay compensation to the claimant. It is further contended that the compensation claimed by the claimant is highly excessive and exorbitant.

4. During enquiry, on behalf of the claimant, P.Ws.1 and 2 were examined and Exs.A1 to A36 were marked. On behalf of the Insurance Company, Ex.B1 was marked.

5. Learned Counsel for the appellant-claimant submits that adequate compensation has not been awarded by the Tribunal though Ex.A3-wound certificate, issued by the Government Area Hospital, Jagtial, discloses that the appellant-claimant had sustained deformity of right hip, which is grievous in nature, apart from two other injuries on the right knee and right wrist and also lacerated wound on the occipital region and on nose. He further submitted that meager compensation has been awarded by the Tribunal towards pain and suffering, extra nourishment and transport charges. He further submitted that though the Tribunal had come to the opinion that the claimant could not have worked for three months due to the accident, it awarded only a sum of Rs.6,000/- towards loss of earnings and

as such the appellant-claimant is entitled to get some more amount under the above mentioned head.

6. The case against the 1st respondent-driver of the lorry was dismissed for default by an order of this Court dated 05.01.2012. Despite the service of notice, respondents 2 and 3, who are owner and insurer of the offending vehicle, did not choose to appear either in person or through a Counsel.

7. I have considered the contentions of the learned Counsel for the appellant and perused the impugned award passed by the Claims Tribunal and material on record.

8. There is no much dispute with regard to occurrence of accident and the insurance of crime vehicle with the 3rd respondent. Therefore, the findings given by the Tribunal, basing on the evidence of P.W.1 and Ex.A1, copy of FIR, and Ex.A5 copy of charge sheet, and also Ex.B1, copy of insurance policy, are confirmed.

9. In regard to the quantum of compensation, the Tribunal considered the evidence of P.W.2, the doctor, who examined the claimant (P.W.1). P.W.2 stated in his evidence that P.W.1 was treated in Nizam Institute of Medical Sciences, Hyderabad, as an inpatient for dislocation of right hip fracture, lateral right tibia and scalp. As per Ex.A3-wound certificate, the appellant-claimant suffered deformity of right hip, which is grievous in

nature, and two other injuries on the right knee and right wrist and also a lacerated wound on the occipital region and on nose. Considering the medical evidence in respect of the nature of injuries and extent of disability, the Tribunal has awarded a sum of Rs.40,000/- towards pain and suffering, which, in my view, is very meager. Therefore, I am inclined to enhance the amount under the head of pain and suffering from Rs.40,000/- to **Rs.55,000/-**.

10. It is stated that the appellant-claimant was doing business in polishing stones and due to the accident, he had to close down his business. The Tribunal held that the claimant could not have worked for three months and accordingly awarded a sum of Rs.6,000/-, at the rate of Rs.2,000/- per month, towards loss of earnings. However, this Court is of the view that the compensation awarded under this head is meager. Considering the loss of income of the appellant-claimant, I am inclined to enhance the compensation amount from Rs.6,000/- to **Rs.9,000/-**, at the rate of Rs.3,000/- per month, towards loss of earnings. Further, this Court is of the view that the amount awarded under the head of extra nourishment is also very low and meager and the same is hereby enhanced to **Rs.5,000/-** from Rs.2,000/-. The Tribunal, on a consideration of the evidence placed before it, awarded a

sum of Rs.15,306/- towards medical expenses and Rs.4,000/- towards transport charges. The compensation awarded by the Tribunal under these heads is just and reasonable and I do not wish to interfere with the same. Accordingly, this Court awards a total compensation of Rs.88,306/-, which can be rounded off to **Rs.88,300/-** (Rupees Eighty Eight Thousand Three Hundred only).

11. In the result, the appeal is partly allowed. The compensation awarded by the Tribunal is enhanced to **Rs.88,300/-** from Rs.67,300/- with interest @ 7.5% per annum, from the date of petition till the date of realization, payable by the respondents 2 and 3 jointly and severally. The appellant-claimant is permitted to withdraw the entire compensation amount at once. No order as to costs. Miscellaneous applications, if any pending, shall stand closed.

JUSTICE J.UMA DEVI

09-03-2017

Gsn