

THE HON'BLE MS. JUSTICE J. UMA DEVI

MACMA NO. 2647 OF 2005

JUDGMENT:

The claimant in O.P.No. 2147 of 2002 on the file of the XII-Addl. Chief Judge, City Civil Court at Hyderabad (Fast Track Court) has come up with this appeal, having not been satisfied with the compensation awarded by the said Court/Tribunal.

The appellant is the petitioner in OP No. 2147 of 2002. He is working as a RTA constable. That on 20.8.2002 at about 10.00 A.M. while he was checking the vehicles in front of Musheerabad jail gate, he was hit by an auto bearing No. AP 10 U 35 which came in a rash and negligent manner with high speed and as a result of which, he fell down and sustained fracture to his right leg, ankle and other injuries on left leg and head. Soon after the accident, he was taken to Gandhi Hospital, Secunderabad and from there to Nivedita Hospital, Hyderabad.

The appellant's main contention is that the Tribunal, though rightly found that the accident dated 20.8.2002 occurred due to the rash and negligent driving of the auto by its driver and answered the issue No.1 in his favour and as against the owner and insurer of the offending auto, had not properly evaluated the evidence on record so far as the issue framed relating to quantum of compensation, despite the evidence given by him regarding treatment taken by him in Nivedita hospital, Hyderabad. The medical expenditure incurred by him was not properly appreciated by the Tribunal. The medical prescriptions and medical bills-Ex.A7 to the tune

of Rs.54,723/- spent by him towards medical expenditure, were not at all taken into consideration because of non-examination of any witness in proof of spending of such amount towards medical expenditure, though the evidence given by him regarding the amounts spent towards medical expenditure was clinchingly established by way of production of the medical prescriptions and medical bills. The valid evidence available in the case record in respect of the amounts incurred by him towards medical expenditure was discarded by the Tribunal without assigning any valid reason. The evidence given by him, though was clear and categorical, so far as the treatment taken by him in Nivedita hospital and about incurring of a sum of Rs.54,723/- towards medical expenditure, the Tribunal had awarded meager sum of Rs.5,000/- towards medical expenditure and Rs.2,000/- towards pain and suffering. The amount of compensation awarded under the head of pain and suffering is also very low since Ex.A4-discharge certificate and the medical certificate-Ex.A3 clinchingly establish the fact that he sustained fracture to right ankle and injuries on other parts of his body, it can be held that the Tribunal is not correct in granting adequate and reasonable compensation etc.

The learned standing counsel appearing for the insurance company-2nd respondent, on the other hand, contended that a reasonable compensation was awarded by the Tribunal taking into consideration of the evidence given by the petitioner himself. Because of non-examination of any witness in proof of Ex.A7-medical bills, the Tribunal had not

awarded the sum of Rs.54,723/-, which, according to the petitioner, was spent towards medical expenditure etc.

On hearing the arguments on both sides, it is understood that the only dispute raised in the present case is with regard to the quantum of compensation. The appellant laid the claim as against the insurance company and two others claiming a sum of Rs.1,00,000/- towards compensation. While the appellant was performing his duty as RTA constable at Musheerabad jail gate, he was hit by an auto bearing No. AP 10 U 35 which was driven by its driver in a rash and negligent manner. The Tribunal formulated two issues and held issue No.1 in favour of the appellant. The issue No.2 formulated by the Tribunal, though was answered to some extent in favour of the appellant by awarding compensation of Rs.22,000/-, the same was assailed by the appellant contending that no reasonable compensation was awarded to him and that the Tribunal purposely omitted to take into consideration of the medical bills produced by him and also the nature of the injuries received by him.

The appellant produced medical certificate and also the discharge summary card issued by the Gandhi Hospital, Secunderabad. The appellant was admitted in the Gandhi Hospital soon after the accident. Later he was taken to a private hospital for treatment. Though no medical expert was examined by the appellant, the *discharge summary card* as well as *medical certificate* issued by the Gandhi Hospital, Secunderabad would clinchingly establish the fact that the appellant sustained fracture

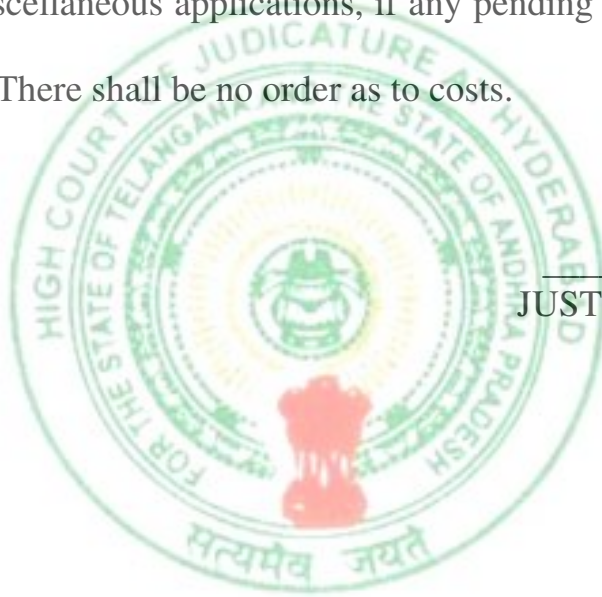
to his right ankle and for the said injuries he obtained treatment in a private hospital.

A perusal of the order impugned in this appeal shows that no amount was awarded under the head of extra-nourishment. No valid reason is assigned by the Tribunal for not awarding any compensation under the head of extra-nourishment. This Court also finds that only an amount of Rs.2,000/- awarded by the Tribunal under head of *pain and suffering*, which is in the opinion of this Court, is not reasonable. The Tribunal has awarded Rs.5,000/- towards compensation for the injury to right hand and Rs.10,000/- for the injury to his right leg. Taking into consideration the nature of injuries sustained by the appellant and also fracture injury to his right ankle, this Court is of the view that awarding of compensation of Rs.18,000/- under the head of *pain and suffering* is just and reasonable. Since it is noticed that no amount was awarded under the head of extra-nourishment, this Court awards Rs.5,000/- towards extra-nourishment. As it is found that no amount was awarded under the head of transport charges to hospital, an amount of Rs.2,000/- is awarded under the head of transport charges to hospital. Even after making an observation by the Tribunal at page No.6 of its order that the petitioner (the appellant herein) might have taken treatment at several intervals for the injuries said to be sustained by him as set out in First Information Report etc., the Tribunal seems to have awarded a meager sum of Rs.5,000/- under the head of medical expenditure. In view of the above

mentioned fact which is borne by the record, a sum of Rs.50,000/- can also be awarded under the head of medical expenditure. Thus the appellant is entitled to Rs.75,000/- towards compensation in all.

In the light of the discussion held above, the appeal is allowed in part awarding compensation of Rs.75,000/- (Rupees Seventy Five Thousands only) together with interest @ 7.5% per annum from the date of filing of the claim petition till the date of realization. The above mentioned amount is payable by the respondents 1 and 2 jointly and severally. Miscellaneous applications, if any pending in this appeal, shall stand closed. There shall be no order as to costs.

Dt.22.3.2017
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JUSTICE J. UMA DEVI