

THE HON'BLE MS. JUSTICE J. UMA DEVI

MACMA NO.2104 of 2009

JUDGMENT:

This appeal is filed against the award dated 5.2.2007 passed by the X-Addl. Chief Judge-cum-Motor Accidents Claims Tribunal, City Civil Court, Hyderabad (Fast Track Court) in O.P.No. 1543 of 2004 whereby it awarded compensation of Rs.52,000/- to the petitioner with interest @ 7.5% P.A. being aggrieved by the quantum of compensation.

The assertions made in the aforesaid OP are briefly stated as follows,

That on 9.8.2003 at about 4.30 P.M. while the petitioner was having tea on a road side hotel at Timmareddypalli village, one Eicher Van bearing No. AP 11 U 3255 which was proceeding towards Siddipet from Hyderabad in a rash and negligent manner at high speed, gave a hit to the car bearing No. AAU 224 which was coming in its opposite direction, due to the impact, the driver of the car lost control over it and it rammed into the hotel where the petitioner was taking tea and dashed against him. In the aforesaid accident, the petitioner sustained fracture to his left leg, apart from severe injuries all over his body. Police of Kukunoorpalli registered a case in Cr.No. 73 of 2003 under Sections 304-A and 337 IPC against the driver of Eicher Van bearing No. AP 11 U 3255. The petitioner attained permanent disability due to the fracture injury received to his left leg and presently he is not in a position to walk without the help of a hand stick. He spent huge amount towards treatment and medicines. The petitioner has to undergo operation for which he

requires a sum of Rs.20,000/-. Hence he laid the claim for Rs.1,50,000/- as against the respondents 1 and 2 who are the owner and insurer of the Eicher van bearing No. AP 11 U 3255.

Respondent No.1 remained exparte. Respondent No.2-insurance company filed its counter denying the averments made in the OP with regard to age, income, occupation, manner of accident and the injuries suffered by the petitioner. This respondent also denied the particulars of the insurance policy mentioned by the petitioner in respect of Van bearing No. AP 11 U 3255.

Before the Tribunal, the petitioner examined himself as P.W.1 and marked Exs.A1 to A7 being certified copies of FIR, Charge sheet, Scene of offence panchanama, wound certificate, discharge ticket, bunch of medical and two X-ray films. Through P.W.2-Dr. K. Anjaneyulu Exs. X1 and X2 were marked. No oral evidence was adduced on behalf of respondent No.2-insurance Company. But the insurance policy of the crime vehicle was marked as Ex.B1 by consent.

The Tribunal, on appreciation of the evidence of P.W.1, the injured eye-witness to the accident, came to the conclusion that the driver of the Eicher Van bearing No. AP 11 U 3255 is responsible for causing the accident. During the examination P.W.1 stated that while he was taking tea on 9.8.2003 at 4.30 P.M. in his village Timmareddypalli, one Eicher Van bearing No. AP 11 U 3255, which was proceeding towards Siddipet from Hyderabad, was driven by the driver in a rash and negligent manner and it gave a hit to the opposite car bearing No. AAU-224 and due to the said impact, the driver of the car could not be able to control it and as a

result of it, the car rammed into the hotel where he was taking tea and gave a hit to him. He sustained fracture injury to left leg, apart from other severe injuries all over the body. The above evidence given by P.W.1 had not been challenged by the 2nd respondent who contested the case. No rebuttal evidence was adduced by the 2nd respondent. No steps whatsoever were taken by the 2nd respondent to examine the driver of the Eicher Van bearing No. AP 11 U 3255 to establish that the above accident had taken place due to the negligence on the part of P.W.1 himself. Since the evidence of P.W.1 remained uncontroverted, the Court below, relying on the evidence of P.W.1, came to the conclusion that the accident dated 9.8.2003, in which the petitioner sustained injuries, occurred due to the rash and negligent driving of Eicher Van bearing No. AP 11 U 3255 by its driver. The finding recorded by the Tribunal in respect of the negligence attributed to the driver of the Eicher Van bearing No. AP 11 U 3255 cannot be faulted, as there is nothing on record to disbelieve the testimony of P.W.1 who suffered the injuries in the abovementioned accident.

The only question that remains to be answered in the present appeal is only in respect of the validity or otherwise of the findings recorded by the Tribunal regarding the quantum of compensation. The main grievance of the appellant is that the doctor, whom he examined as P.W.2, though deposed in clear terms that he is suffering from disability of 20%, the Tribunal, without recording any reasoning to discard his testimony, came to a conclusion on its own assessment in respect of the disability attained by him. No valid reasons are recorded by the Tribunal

to disbelieve the testimony of P.W.2 who deposed in clear terms that the petitioner is suffering from disability of 20%. The Tribunal, having come to the conclusion that no substantial material is brought on record to disbelieve the evidence of P.W.2, which is not challenged, has assessed the disability on its volition at 10% and such assessment is contrary to the evidence available in the case record. The Tribunal has taken the income of the petitioner-claimant at Rs.1250 per month, though it is held by the Apex Court in various cases that while computing the quantum of compensation, the income of a non-earning member can be taken at Rs.3,000/- per month. The next other contention of the appellant-claimant is that no amount is awarded under the head of medical expenditure. Though ample evidence is there on record to award the compensation of Rs.1,50,000/- as claimed by the claimant, the Court below has awarded a meagre compensation of Rs.52,000/-. Asserting the above mentioned contentions, the appellant craves the indulgence of this Court to pass an appropriate order by awarding just and reasonable compensation etc.

Learned standing counsel for the respondent-insurance company, while supporting the award passed by the Tribunal, has contended that the Tribunal, on appreciation of oral and documentary evidence available in the case record, has awarded compensation of Rs.52,000/- and that the compensation so awarded is just and reasonable. Since no steps are taken by the claimant to examine the person who had issued Ex.A6, -bunch of medical bills, the Tribunal has not awarded the compensation amount under the head of medical expenditure. The Tribunal, on consideration of the fact that the petitioner is a student, awarded a just and reasonable

compensation under the head of loss of earnings. According to him, the order passed by the Tribunal awarding Rs.52,000/- needs no interference.

The Certified Copy of the wound certificate-Ex.A4 and the evidence of P.W.2-doctor disclose that the petitioner sustained (1) swelling of right leg and foot, (2) multiple abrasions over right leg and foot (3) deformity of left leg, (4) sutured wound of 3 cm over left leg (5) abrasions of 4' x 3' over right forearm (6) multiple abrasions over the body. P.W.2-Dr. K. Anjaneyulu deposed that he noticed Grade-II comp. fracture of fibula over left leg M/3rd. On verification of Ex.A5-discharge certificate, and on examination of the petitioner, P.W.2 noticed that there is deformity in left leg, shortening of left lower limb by 2 c.m. and limping while walking etc. As per the evidence of P.W.2, there is stiffness of right ankle and that the petitioner has got the difficulty of squatting and sitting in cross-leg position. On examination of the petitioner, P.W.2 assessed that there is permanent disability as 20%. The evidence given by P.W.2 as to attainment of the disability of 20% by the petitioner due to fracture injury he received to his left leg has not been challenged much by the other side. The Tribunal has also given a finding that nothing useful was brought out by the 2nd respondent during the cross-examination of P.W.2. Though the evidence of P.W.2 has not been rebutted and no evidence of any sort of nature is adduced to disbelieve the testimony of P.W.2, the Tribunal has assessed the disability at 10% without recording any sound reasonings to discard the testimony of P.W.2. The Tribunal though in clear terms has given the finding that no substantial material is adduced to disbelieve the testimony of P.W.2, has

assessed the disability at 10% on its own volition. I am unable to understand on what basis the Tribunal has assessed the disability at 10% discarding the testimony of P.W.2 who in clear terms has assessed the disability at 20% on noticing that P.W.1 has got the difficulty of sitting and squatting in cross-leg position, limping while walking and shortening of lower limb by 2 cm etc.

The petitioner-claimant was aged about 22 years by the date of accident and he has suffered throughout his life due to the disability which he attained on account of the fracture to his left leg in the accident dated 9.8.2003. If the income of the petitioner is taken at Rs.3,000/- per month adopting the decision rendered by the Apex Court in various cases that income of a non-earning member can be taken at Rs.3,000/- per month while computing the compensation etc, the loss of income due to the disability of 20% comes to Rs.1,22,400/- by applying a multiplier of 17. The loss of income for two months during his hospitalization etc. can be fixed at Rs.6000/- as against Rs.2,500/-. The Tribunal has awarded compensation of Rs.2,000/- for each simple five injuries, (total Rs.10,000/-), and Rs.15,000/- for the fracture injury. The Tribunal has awarded Rs.1,000/- towards Extra Nourishment and Rs.1,000/- towards transport charges. If these amounts are added to Rs.1,22,400/-, the compensation amount would come to Rs.1,55,400/-.

The petitioner was aged about 22 years by the date of the accident and because of the fracture injury he received in the accident, he attained disability. Shortening of 2 cm is noticed in left lower limb and on account of the same there is limping etc. and these things affect his future career

etc. If these things are taken into consideration, he is entitled to get some more amount under the head of loss of enjoyment in life and future prospects etc. If an amount of Rs.20,000/- is awarded under the head of loss of enjoyment in life and future prospects, he is entitled to get total compensation amount of Rs.1,75,400/- which is restricted to Rs.1,50,000/- as claimed by the petitioner.

Considering the above aspects, this Court is of the firm opinion that the compensation amount of Rs.1,50,000/- claimed by the petitioner is just and reasonable. The Court below, without considering the aforementioned aspects, has awarded a sum of Rs.52,000/- towards compensation, which, according to this Court, is very meagre. Upon consideration of the aforesaid aspects this Court is of the view that the quantum of compensation awarded by the Court below is very meagre and low and the same can be enhanced to Rs.1,50,000/-.

In the result the appeal is allowed enhancing the compensation amount to Rs.1,50,000/- (Rupees One Lakh Fifty Thousands only) from Rs.52,000/-. The respondents 1 and 2 who are the owner and insurer of the offending Eicher Van bearing No. AP 11 U 3255 are held liable to pay the compensation amount together with interest @ 7.5% per annum from the date of filing of the claim petition till realization. The award of the Tribunal is modified accordingly. Miscellaneous applications, if any pending, shall stand closed. No order as to costs.

JUSTICE J. UMA DEVI, J

Dt.22.9.2017
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