

HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A. No. 2032 OF 2006

JUDGMENT:

1. This Appeal is arising out of the order, dated 25.04.2006, in O.P. No.1743 of 2004 on the file of the Chairman, Motor Vehicle Accident Claims Tribunal-cum-XIV Additional Chief Judge, City Civil Court (Fast Track Court) at Hyderabad (for short, 'the Tribunal').

2. Appellant herein is the petitioner-injured in a motor vehicle accident. He filed O.P. No.1743 of 2004 under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') claiming compensation of Rs.1,50,000/- for the injuries sustained by him. The Tribunal awarded compensation of Rs.61,350/- on all counts.

3. The appellant, being aggrieved by the quantum of compensation, preferred this Appeal seeking enhancement of compensation.

4. Heard Mr. B. Chinnapa Reddy, learned counsel for the appellant, and Ms. K. Savva, learned counsel, representing Mr. K. Laxmi Prasad, learned standing counsel for the 2nd respondent-insurance company.

5. The point for consideration in this matter is whether the appellant is entitled for enhancement of compensation?

6. Learned counsel for the appellant submits that the Tribunal has not considered the gravity of the injuries and the treatment undergone by the appellant. The appellant had received fractures

and his right toe was damaged and he had undergone treatment in the hospital as in-patient and also underwent an operation. But, the Tribunal without taking into consideration these aspects, awarded a meager amount of compensation under different heads and, hence, sought for enhancement.

7. Learned counsel appearing for the 2nd respondent-insurance company contends that the petitioner had undergone treatment in the hospital as in-patient only for two days and the injuries are already healed and he resumed to normal life and, therefore, he is not entitled for enhancement of compensation.

8. PW.2 is the medical officer, who has treated the appellant. According to him, the appellant had received the following injuries:

1. Crush injury on the dorsum of foot with loss of tissue and tendon and smooth muscles are damaged measuring 4 x 2 and ½ centimeters;
2. Lacerated wound measuring 8 x 1 centimeters of right foot; and
3. Lacerated injury on the right toe 4 x ½ centimeters.

9. The testimony of PW.2 clearly reveals that the appellant had undergone an operation for the grievous injuries received by him. The Tribunal had extracted the relevant portion of the testimony of P.W.2 in Para 11 of its order, which is extracted hereunder:

“11. The petitioner examined P.W.2 Dr. L. Raj Kumar, who treated the petitioner. He deposed that the petitioner suffered (i) crush injury on the dorsum of foot with loss of

tissue and tendon and smooth muscles are damaged measuring 4 x 2 and ½ centimeters, (ii) lacerated wound measuring 8 x 1 centimeters of right foot and (iii) lacerated injury on the right toe 4 x ½ centimeters. X-ray revealed fracture of base of fifth metatarsal bone. They have debrided the injuries and repair to the injury was done, under strict ascetic precautions in the operation theater, under anesthesia. The injuries are grievous in nature. The petitioner was discharged on 15.04.2004. He appeared as an out patient on 17.04.2004 and 17.05.2005 and took treatment. The petitioner cannot lift heavy weights and he cannot run. He cannot work properly. He cannot stand for long time continuously. The second toe of the right foot is damaged permanently. He issued Exs.A-3 and A-4 certificate and prescriptions. The petitioner was given Ex.A-5 bill for the treatment and medicines purchased in the hospital premises. Ex.A-9 is the discharge summary cum follow up card. Ex.A-7 x-ray was taken at his instance. This medical practitioner is an Orthopedic Surgeon having 28 years of experience. He stated in cross-examination that the injuries are healed and so, the petitioner can attend to his normal duties. He denied the suggestion about the normal capacity of the petitioner to lift weights, run and stand. He denied the suggestion that he is deposing false. He personally treated the petitioner and the petitioner took treatment as an inpatient for two days only. He denied the suggestion that the petitioner did not take follow up treatment."

10. From the extracted testimony of PW.2, it is clear that though the Tribunal properly appreciated the evidence of P.W.2., but awarded meager amount of compensation. It is obvious that the appellant has suffered grievous injuries and the side affects of the grievous injuries in future have been stated by the medical officer in the above extracted portion.

11. In *Rekha Jain Vs. National Insurance Company Limited and others*¹, the Apex Court held as follows in Paragraphs 28 and 40:

“28. This Court is required to keep in mind justice, equity and good conscience which must be the primary, relevant and important aspects for awarding just and reasonable compensation to an unfortunate victim, the Appellant herein who has sustained grievous injuries to her body and whose future prospects are completely doomed. Further, the Tribunal and courts while awarding compensation for bodily injuries, must realize that the possession of one's own body is the first and most valuable of all human rights and that all other possessions and ownership are the extensions of the basic right. Bodily injuries should be equated with the deprivation which entitles a claimant to damages and the amount of damages varies in accordance with the gravity of injuries.

40. It is well-settled principle that in granting compensation for personal injury, the injured has to be compensated (1) for pain and suffering; (2) for loss of amenities; (3) shortened expectation of life, if any; (4) loss of earnings or loss of earning capacity or in some cases for both; and (5) medical treatment and other special damages. In personal injury cases the two main elements are the personal loss and pecuniary loss. Chief Justice Cockburn in *Fair's case*, *supra*, distinguished the above two aspects thus:

“In assessing the compensation the jury should take into account two things, first, the pecuniary loss the Plaintiff sustains by the accident: secondly, the injury he sustains in his person, or his physical capacity of enjoying life. When they come to the consideration of the pecuniary loss they have to take into account not only his present loss, but his incapacity to earn a future improved income.”

¹ 2013 (8) SCC 389

12. On consideration of the evidence on record, and in view of the principle laid down by the Apex Court supra, it can safely be concluded that the appellant is entitled for enhancement of compensation. The following is the tabular form showing the amount of compensation awarded by the Tribunal and enhanced by this Court, if any, under the relevant heads:

Sl.No.	Name of Head	Awarded by Tribunal	Awarded by this Court
01.	Loss of earnings	Rs.18,000/-	Rs.18,000/-
02.	Transportation and attendant charges	Rs.2,000/-	Rs.15,000/-
03.	Medical expenses and extra nourishment	Rs.11,350/-	Rs.11,350/-
04.	Pain and suffering	Rs.10,000	Rs.25,000/-
05.	Loss of expectation of life	Rs.10,000/-	Rs.20,000/-
06.	Permanent disability	Rs.10,000/-	Rs.30,000/-
TOTAL		Rs.61,350/-	Rs.1,19,350/-

13. In the result, the Appeal is partly allowed enhancing the amount of compensation awarded by the Tribunal from Rs.61,350/- to Rs.1,19,350/- with proportionate costs and interest at the rate of 7.5%p.a. from the date of petition till realization. The 2nd respondent is directed to deposit the entire amount within two months from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw half of the amount and the remaining amount shall be withdrawn after expiry of appeal time.

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

G. SHYAM PRASAD, J

Date: 03.01.2017.
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