

HONOURABLE SRI JUSTICE G.SHYAM PRASAD

M.A.C.M.A.No.397 OF 2006

JUDGMENT:

This Motor Accident Civil Miscellaneous Appeal is arising out of the order dated 7th November, 2005 passed in Original Petition No.182 of 2005 on the file of the Chairperson, Motor Vehicle Accident Claims Tribunal-cum-I Additional District Judge, Karimnagar (for short "The tribunal").

The appellant is the injured in the Motor Vehicle Accident occurred on 6-9-2004. He filed O.P.No.182 of 2005 against the respondent No.1 owner and respondent No.2 Insurer of the lorry bearing No.A.P-16-TT-7666 claiming compensation of Rs.3,00,000/- on account of injuries sustained by her in the accident.

The tribunal on a consideration of evidence of P.W.1 the injured and the evidence of Medical Officer P.W.2 and the documents Exs.A.1 to A.7 and Ex.B.1 copy of Insurance Policy, awarded compensation of Rs.44,000/- with interest at 9% p.a.,

Being aggrieved by the quantum of compensation, this appeal has been preferred for enhancement.

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

The appellant is the injured in the motor vehicle accident. On 6-9-2004, while she was proceeding on bullock cart from Huzurabad to Dammakapet, a lorry bearing No.A.P.16 TT 7666 dashed against the bullock cart. The appellant and her husband fell

down from the bullock cart and sustained injuries. The appellant sustained fracture injuries to her right side of the prelvic region and she was shifted to Life Line Hospital, Warangal where she had undergone surgery. As she had undergone huge medical expenditure for the pain and suffering, she claimed compensation of Rs.3,00,000/- against respondents 1 and 2.

The respondent No.1 remained exparte and respondent No.2 filed counter denying the liability. However, filed Ex.B.1 copy of Insurance Policy.

Heard the arguments of learned counsel for the appellant Sri Ramchandar Rao Vemuganti and the learned counsel for second respondent Sri Katta Lakshmi Prasad represented by Ms.Shravya.

Learned counsel for the appellant submits that the appellant was working as a labourer. She sustained a fracture to her pelvic region. She underwent a surgery and incurred huge medical expenditure. P.W.2 the consultant Orthopedic Surgeon at Warangal diagnosed that she sustained fracture of inferior public ramus. She underwent treatment for six days as inpatient and was advised bed rest for six weeks. Ex.A.3 is the Medical Examination Report. Ex.A.4 is the Discharge Card. Exs.A.5 and A.7 are X-Ray Report and X-ray Film, respectively and Ex.A.6 is the bunch of Medical Bills to a tune of Rs.2,425/-. The appellant had taken treatment as out patient for a period of six months as per the evidence of P.W.2. The Medical Officer also stated that appellant sustained disability due to the

injury which is in the form of mild stiffness to the left hip. It is further submitted that the tribunal without considering the nature of injuries and the suffering undergone by the appellant had awarded a very meager amount of compensation. Therefore, sought for enhancement of compensation under various heads.

Learned counsel for the appellant placed reliance on a decision reported in the case of *JITHENDRA KHIMSHANKAR TRIVEDI AND OTHERS Vs. KASAM DAUD KUMBHAR AND OTHERS* ⁽¹⁾ where the notional income of the deceased lady who was a house wife was taken as Rs.3,000/- per month.

The above decision is applicable to the facts of the case though it is a case of injury as the appellant in this case is a female and also a labourer.

Another decision reported in the case of *G.RAVINDRANATH ALIAS R.CHOWDARY vs. E.SRINIVAS AND ANOTHER* ⁽²⁾ was also cited with regard to award of pecuniary damage. Taking into consideration the rational in the above decisions, the compensation is awarded in this case.

On consideration of the evidence, it is obvious that the tribunal has awarded a very meager compensation. The appellant is admittedly working as a labourer. She was a woman aged about 45 years by the date of accident. The medical evidence of P.W.2 clearly reveals that she had received pelvic fracture. She had suffered 5% of

¹ (2015) 4 SCC 237

² AIR 2013 SC 2974

disability of mild stiffness on the left hip. Though the tribunal had taken the disability on the medical evidence at 5% on a consideration of the evidence, the disability can be taken into consideration as 25%. The appellant being a lady, a daily wage labourer, has to suffer through out her life with her disability, though it is mild stiffness of the hip joint. She had also undergone an operation for the said injury. Therefore, she is entitled for a functional disability of 25%.

The tribunal had taken the income of the appellant as Rs.75/- per day and applied the multiplier '13' as per II Schedule. The income of the appellant can be taken as Rs.100/- per day which is in accordance with Minimum Wages Act. The multiplier applicable to the age of the petitioner i.e., 45 years as per *SARLA VERMA & ORS. Vs.DELHI TRANSPORT CORP. & ANR.* reported in CIVIL APPEAL No.3483 of 2008 (Arising out of SLP (c) No.8648 of 2007) can be taken into consideration as '14'. The annual income is Rs.3,000/- x 12 = Rs.36,000/-. The multiplier '14' when applied, it comes to Rs.36,000/- x 14 = Rs.5,04,000/-, the petitioner is entitled to 25% out of it which comes to Rs.1,26,000/-.

The tribunal awarded Rs.15,000/- towards pain and suffering which is enhanced to Rs.20,000/- due to functional disability of 25%.

Placing reliance on the following decisions, the notional income of the injured is taken into consideration as Rs.3,000/- per month and those decisions are as follows:

- 1) *Ramesh Singh v. Satbir Singh*³
- 2) *New India Assurance Company Ltd. v. Smt. Shanti Pathak*⁴
- 3) *Oriental Insurance Co. Ltd. v. Syed Ibrahim*⁵
- 4) *New India Assurance Co. Ltd., v. Kalpana (Smt)*⁶
- 5) *Sri Appayachari v. K. Vadivel and the New India Assurance Company Ltd., rep. by its Manager*⁷
- 6) *United India Insurance Co. Ltd. v. Shri Buro Mahara*⁸

The tribunal has awarded Rs.4,500/- towards loss of earnings. In fact, it was granted only for the six weeks bed rest period and also for a total period of three months. This amount is not in proportion with the loss of earnings for a period of six months. The appellant was advised bed rest for six weeks and had taken treatment as out patient and was also advised for red rest for six months. The tribunal has not awarded any amount under loss of earnings for a period of six months holding that there is no supporting material for the proof of income. The notional income of the appellant could have been taken into consideration by the tribunal for assessment of loss of earnings for six months. The appellant is entitled for loss of earnings for a period of six months at the rate of Rs.3,000/- per month which comes to Rs.18,000/-.

³ MANU/SC/7089/2008

⁴ MANU/SC/7776/2007

⁵ MANU/SC/7915/2007

⁶ (2007) 3 SCC 538

⁷ MANU/KA/3721/2013

⁸ MANU/WB/0139/2015

The tribunal awarded Rs.5,000/- towards traveling expenses.

On a consideration of the evidence, the compensation awarded by tribunal is enhanced as shown in the tabular form below.

Sl.No.	Name of Head	Compensation Awarded by Tribunal	Compensation Awarded by this Court
01.	Pain and Suffering	Rs.15,000/-	Rs.20,000/-
02.	Medical Bills	Rs.2,425/-	Rs.2,425/-
03.	Transportation charges	Rs.5,000/-	Rs.5,000/-
04.	Future loss of amenities	Rs.5,000/-	Rs.15,000/-
05.	Disability	Rs.11,700/-	Rs.1,26,000/-
06.	Loss of earning	Rs.4,500/-	Rs.18,000/-
	Total	Rs.43,625/- Rounded off to Rs.44,000/-	Rs.1,86,425/-

In the result, the appeal is partly allowed. The compensation awarded by the tribunal of Rs.44,000/- is enhanced to Rs.1,86,425/- with proportionate costs and subsequent interest at the rate of 7.5% per annum from the date of petition till realization. The respondents 1 and 2 are directed to deposit the amount within two months from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the entire amount after expiry of the appeal time.

As a sequel to the disposal of this appeal, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE G.SHYAM PRASAD

Dated 18-1-2017.

Dvs.

HONOURABLE SRI JUSTICE G.SHYAM PRASAD



M.A.C.M.A.No.397 OF 2006

Dated 18-1-2017.

Dvs