

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A No. 905 of 2005

JUDGMENT:

This appeal is arising out of the Order and Decree dated 07.12.2004 in O.P.No.814 of 2000 on the file of the Chairman, MV Act-cum-II Additional District Judge, RR District, NTR Nagar (for short, 'the Tribunal'). The appellant is the insured in the motor vehicle accident. Aggrieved by the award passed by the Tribunal, he preferred this appeal for enhancement of compensation.

2. Heard the arguments of Sri T. Viswarupa Chary, learned counsel for the appellant. Notices have been served to the respondents in this appeal. Sri S.A.V. Ratnam filed vakalat on behalf of 2nd respondent-insurance company. Since the O.P. is pertaining to the year 2005, this appeal is taken up for disposal after hearing the arguments of learned counsel for the appellant.

3. Brief facts of the case are that on 28.10.1998, at about 9:15 PM, the petitioner along with his friend Mahender Goud were going on their scooter from Santoshnagar to Saroornagar and when they reached near MIDHANI Township, one auto bearing No.AP-11U-6752, driven by its driver in a rash and negligent manner, came at a high speed, and dashed against the scooter of the petitioner. As a result, the petitioner fell down and sustained fracture of right leg and fracture of right hand and other injuries all over the body. The Kanchanbagh police registered a case in Crime No.127 of 1998 for the offence punishable under Section 337 IPC. The petitioner was working as a private employee and used to earn Rs.2,000/- per month. Alleging that the accident occurred due to the rash and negligent driving of the auto bearing No.AP-11U-6752, the petitioner filed claim petition against respondents 1 and 2, the owner and insurer of

the auto, claiming compensation of Rs.2,00,000/- on account of the injuries suffered by him in the accident.

4. Respondent No.1-owner had remained ex parte. Respondent No.2-insurer filed its counter denying the averments made in the claim petition.

5. Based on the pleadings, the Tribunal framed the following issues for trial.

“i) Whether the accident occurred took place on 28.10.98 at about 9.15 AM near Midhani Township, Kanchanbagh on account of the rash and negligence driving of the driver of the auto bearing No.AP11U 6752?

ii) Whether the petitioner is entitled to claim compensation and if so for how much, from which respondent?

iii) To what relief?”

6. On behalf of the petitioner-claimant, PW.1 was examined, and documents Exs.A1 to A5 were marked. None was examined on behalf of 2nd respondent-insurance company, however document Ex.B1-insurance policy was marked on its behalf.

7. The Tribunal, on consideration of the oral and documentary evidence, partly-allowed the petition, by awarding compensation of Rs.18,000/- with interest at 9% per annum from the date of petition till realisation. Aggrieved by the order of the Tribunal, the petitioner filed this appeal seeking enhancement of the compensation.

8. The point for consideration in this appeal is whether the appellant-petitioner is entitled to enhancement of compensation.

9. Learned counsel for the appellant submits that the compensation awarded by the Tribunal is highly inadequate for the injuries sustained. It is further submitted that the petitioner suffered crush injury on his right

ankle and he had undergone treatment for about 40 days in the hospital and he produced medical bills under Ex.A5 to the tune of Rs.1,475/-, but the Tribunal awarded a meager amount of compensation of Rs.18,000/-.

10. It is pertinent to note that in paragraph 7 of the Award, the Tribunal has mentioned the nature of treatment undergone by the appellant in the hospital. It has given a clear and categorical finding to the effect that the petitioner had taken treatment for crush injury in Sai Nursing Home from 11.11.1998 to 20.12.1998. Ex.A2 is the medico-legal record, Ex.A5 is the medical bills, and Ex.A4 is the discharge card of Sai Nursing Home. The Tribunal did not even consider to award the actual medical expenditure of Rs.1,475/- incurred by the petitioner. It is also pertinent to note that the petitioner is a private employee earning Rs.2,000/- per month, and he had undergone treatment for about 40 days in the hospital, which prevented him from attending to his work during the period of treatment.

11. In view of the nature of injury suffered by the appellant-petitioner, and the treatment taken by him, this Court is of the view that the compensation awarded by the Tribunal is inadequate and therefore the compensation is enhanced as shown in the tabular format below.

S.No	Head	Compensation awarded by the Tribunal	Compensation enhanced
1	Crush injury	Rs.15,000/-	Rs.40,000/-
2.	Medical expenditure	Rs.1,000/-	Rs.1,475/-
3.	Pain & Suffering		Rs.25,000/-
4.	Extra nourishment, attendant charges, transportation charges	Rs.2,000/-	Rs.10,000/-
5.	Loss of earnings	Nil	Rs.6,000/- (@ Rs.2,000/- p.m. for 3 months)
	Total	Rs.18,000/-	Rs.82,475/-

12. In the result, the appeal is partly-allowed, by enhancing the compensation from Rs.18,000/- to Rs.82,475/- with proportionate costs and interest at 7.5% per annum from the date of petition till realisation, in view of the judgment of the Hon'ble Supreme Court in Dharampal and others Vs. U.P. State Road Transport Corporation¹. No costs. Pending miscellaneous petitions, if any, shall stand closed.

GUDISEVA SHYAM PRASAD, J

16th June, 2017

KSM



¹ MANU/SC/7680/2008

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