

THE HON'BLE MS. JUSTICE J. UMA DEVI

MACMA NO. 2901 of 2009

JUDGMENT:

This appeal is filed against the award dated 5.2.2008 passed by the Motor Accidents Claims Tribunal-cum-IV-Addl. District Judge (Fast Track Court), Anantapur in O.P.No. 622 of 2005 whereby it awarded compensation of Rs.45,000/- 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,

The petitioner who was aged about 30 years was working as Senior Marketing Officer, Agent in M/s. Agri Gold Farms Limited, Anantapur and was also doing milk business and Real Estate business and earning Rs.5,000/- per month. That on 18.8.2005 at about 4.00 P.M. while the petitioner along with his colleague was proceeding on a two wheeler from Narpala to Anantapur, an RTC bus bearing No. AP 10 Z 6055 came from Anantapur side in a rash and negligent manner at high speed and dashed against the two wheeler on which he was proceeding. In the above mentioned accident, the petitioner sustained grievous injuries. Soon after the accident, he was shifted to Government Hospital, Anantapur and from there he was taken to Meda Nursing Home, Anantapur and there he was treated as inpatient for 30 days and he incurred Rs.40,000/- towards medical treatment. A case in Cr.No. 57 of 2005 was registered at Narpala Police Station against the driver of the RTC bus. Hence the petitioner filed the aforesaid OP claiming compensation of Rs.2,00,000/- against the respondent.

Respondent filed counter denying the averments made in the OP with regard to the age, income, occupation, manner of accident and injuries

suffered by the petitioner and also medical expenses incurred for his treatment etc. Respondent's prime contention was that the accident took place due to the rash and negligent driving of two-wheeler by the petitioner himself and therefore, the owner and insurance company of two-wheeler are necessary parties to the petition. It was also contended by the respondent that the compensation claimed is highly excessive and exorbitant.

Before the Tribunal, the petitioner examined himself as P.W.1 and the eye-witness to the accident as P.W.2 and the doctors who treated him as PWs 3 and 4 and marked Exs.A1 to A7 being certified copy of FIR, wound certificate, bunch of medical bills, copy of charge sheet, disability certificate, identity card and bunch of commission bills and Ex.X1-case sheet of the petitioner maintained by Meda Nursing Home. Rebutting the evidence adduced by the petitioner-claimant, no oral or documentary evidence was adduced by the respondent.

The Tribunal, relying on the evidence of P.W.,1, the injured claimant whose evidence was corroborated, in all aspects, by P.W.2, the eye-witness to the accident, had recorded the finding that the accident dated 18.8.2005 in which the petitioner had sustained injuries, occurred due to the rash and negligent driving of the RTC bus bearing No. AP 10 Z 6055 by its driver.

Since the claimant felt that the quantum of compensation awarded to him by the Tribunal in respect of the grievous injury sustained by him to his right lower leg due to which he attained disability of 20% is inadequate, and unreasonable, he came to this Court with a request to grant reasonable compensation.

The main contention of the appellant-claimant is that the Tribunal, without proper appreciation of the evidence given by P.W.3-doctor as to the

attainment of disability of 20% due to fracture of his right lower leg for which he had taken treatment in Meda Nursing Home at Anantapur for a considerable period, had awarded a meagre compensation of Rs.12,000/- towards loss of attaining disability. His contention was that the Tribunal failed to take into consideration the evidence of P.W.4-doctor who, during the course of examination, stated that the petitioner was admitted in Meda Nursing Home on 22.8.2005 and was there as an inpatient upto 1.9.2005, and awarded meagre compensation of Rs.12,000/- towards medical expenditure. He contends further that the Tribunal did not record valid reasons to discard the testimony of P.W.4-doctor who during the course of examination stated that the petitioner underwent surgery for fixing of plates and that he was in Meda Nursing Home from 23.8.2005 to 1.9.2005. It was also his contention that the Tribunal has also not given any reasoning to discard the testimony of P.W.1 (the petitioner) as to his working as an Agent in M/s. Agrigold Farms Limited and also his conducting of milk and real estate business etc. Though the evidence given by P.W.1 as to his income was not challenged by the other side, the Tribunal, by adopting its own method which has got no basis, fixed the income of the petitioner at Rs.2,000/- per month. Since no reasonable compensation was awarded to him in respect of major injury which he sustained in the accident, he approached this Court with a request of passing an appropriate order awarding reasonable compensation by taking into consideration of the fact that he attained disability on account of the fracture injury to his right leg he received in the accident dated 18.8.2005.

The learned Standing Counsel appearing for the respondent-Corporation, while making his submissions, contended that the Tribunal, on

proper appreciation of the evidence on record, awarded compensation of Rs.45,000/- and that the compensation so awarded is just and reasonable.

Since only question that arises for consideration is “whether the compensation awarded by the Tribunal is reasonable or not, the oral and documentary evidence adduced by the claimant needs to be reappreciated?”

Ex.A2, the wound certificate issued in respect of the injuries sustained by the petitioner in the accident dated 18.8.2005 discloses that he sustained a lacerated injury over the right lower leg measuring 2 x 1 cm and an abrasion over the left hand measuring 2 x 1 cm. The injury over the right lower leg is grievous in nature as found from the recitals of Ex.A2, wound certificate. The petitioner had examined P.W.3-Dr. A. Jagannath to speak about the disability attained by him. He also examined Dr. M. Atmaram as P.W.4 to establish that he took treatment in Meda Nursing Home from 22.8.2005 to 1.9.2005. The Tribunal, though noticed that a sum of Rs.21,000/- was incurred by the petitioner towards medical expenditure as mentioned in Ex.A3, the medical bills, awarded only a sum of Rs.12,000/- towards medical expenditure. No reasoning was given by the Tribunal to discard Ex.A3 which would show that a sum of Rs.21,000/- was spent by him towards medical expenditure etc. It is also noticed by this Court that only a sum of Rs.12,000/- is awarded towards loss of income on account of disability said to be attained by the petitioner etc. and that no proper assessment as such is made while computing the compensation under the head of disability. The evidence given by P.W.3 as to attainment of the disability by the petitioner has remained uncontroverted and it is not elicited through P.W.3 that the disability assessed by him is excessive. The treatment taken by the petitioner in Meda Nursing Home is established by the

petitioner by examining P.W.4-Dr. M. Atmaram who during the course of examination has stated in clear terms that the petitioner had taken treatment in Meda Nursing Home from 22.8.2005 to 1.9.2005. Though ample evidence is there in record on all these aspects, and that the petitioner underwent surgery for fixing of plates, only a sum of Rs.12,000/- was awarded under the head of medical expenditure. No proper reasoning is given by the Tribunal to discard the evidence of P.W.4 and the medical bills produced by the petitioner which clearly show that a sum of Rs.21,000/- is incurred by the petitioner towards medical expenditure. Therefore, there is no hesitation for this Court to award a sum of Rs.21,000/- under the head of medical expenditure as against Rs.12,000/-. The Tribunal, without assigning any reason, has awarded Rs.12,000/- notionally under the head of disability, which in the opinion of this Court is not correct. The Tribunal, though believed the evidence adduced by the petitioner in respect of disability attained by him, had not awarded reasonable compensation under the head of disability.

The petitioner was aged about 30 years at the time of the accident. Since the petitioner had not produced the salary certificate, the Tribunal assessed his income at Rs.2,000/- per month notionally and awarded a sum of Rs.4,000/- towards loss of past earnings for two months. Though no evidence in respect of the income he was getting was produced, the income at Rs.3,000/- per month could be taken by adopting the principle laid down by the Apex Court in various cases that income of even a non-earning member could be taken at Rs.3,000/- per month etc. Thus he is entitled to get Rs.1,22,400/- towards loss of income by applying a multiplier of '17' and the disability at 20%.

If the amount of Rs.21,000/- which is now awarded under the head of medical expenditure as against Rs.12,000/- and Rs.6,000/- which is now awarded under the head of loss of earnings for two months @ Rs.3,000/- per month, as against Rs.4,000/- and Rs.1,000/- now awarded for simple injury, are added, the petitioner is entitled to get Rs.1,50,400/- and the same is rounded off to Rs.1,50,000/-. The petitioner is thus entitled to get total compensation of Rs.1,50,000/- as against Rs.45,000/- which is awarded by the Tribunal. This Court declines to award additional compensation amount under the heads of 'pain and suffering', 'extra nourishment' and 'transport charges' etc., as it is felt that the compensation amount awarded under other heads is just and reasonable.

In the result, the appeal is allowed in part enhancing the compensation to Rs.1,50,000/- (Rupees One Lakh and Fifty Thousands only) from Rs.45,000/- making the respondent-Corporation liable to pay the said compensation 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

Dt.8.9.2017
KR