HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A. No.835 OF 2010

JUDGMENT:

1. This Appeal is arising out of the order, dated 24.04.2009, in O.P. No.515 of 2006 on the file the Chairman, Motor Vehicles Accidents Claims Tribunal-cum-I Additional District Judge at Nalgonda (for short, 'the Tribunal').

2. Appellant herein is the petitioner-injured, 1st respondent herein is the owner and 2nd respondent herein is the insurer of the motorcycle bearing No.AP-24-H-4700, who filed a petition before the Tribunal, under Sections 163-A, 166 read with Section 140 of the Motor Vehicles Act, 1988 (for short, 'the Act'), claiming compensation of Rs.2,00,000/- on account of the injuries sustained by him in a motor vehicle accident occurred on 28.01.2006.

3. The brief facts of the petition are that, on 28.01.2006, while the appellant was going on the Hero Honda motorcycle bearing No.AP-24-C-9500 from Nalgonda to A.P. Lingotam, as pillion rider, and when reached A.P. Lingotam, the crime vehicle, being driven by its driver at high speed in a rash and negligent manner, dashed the vehicle of the appellant. As a result of which, the appellant suffered grievous injuries and hence, he filed the petition seeking compensation of Rs.2,00,000/-.

4. Respondent No.1, owner of the crime vehicle, remained *ex parte* before the Tribunal.

5. Respondent No.2 filed counter denying the claim of the appellant.

6. The Tribunal, after framing the issues and, on consideration of the pleadings and evidence of the witnesses P.Ws.1 and 2 and the documents Exs.A-1 to A-6, granted compensation of Rs.51,800/- with proportionate costs and interest at the rate of 7.5% p.a. from the date of petition till realization making both the respondents jointly and severally liable to pay the compensation.

7. Being aggrieved by the quantum of compensation, the appellant preferred the instant Appeal seeking enhancement of the compensation.

8. Heard the arguments of Mr. V. Ramesh Reddy, learned counsel for the appellant, Mr. J. Devanand, learned counsel for the 1st respondent and Mr. B. Narayana Reddy, learned standing counsel for the 2nd respondent-insurance company.

9. The point for consideration in this matter is whether there are sufficient grounds for enhancement of compensation awarded by the Tribunal?

10. Learned counsel for the appellant submits that the Tribunal has awarded Rs.5,000/- towards medical bills whereas the claim was for Rs.34,241/-. It is submitted that the appellant filed Ex.A-4 bunch of medical bills for a sum of Rs.34,241/-. It is further submitted that the appellant had received grievous injuries in the accident; 1) fracture of right neck of femur (hip joint), steel rod inserted, 2)

fracture of right pelvis, 3) fracture of both limps, 4) grievous injury on right shoulder, 5) grievous injury on right elbow and 6) injuries all over the body. As a result of which the appellant sustained permanent disability and took treatment in the hospital. But the Tribunal has awarded a meager amount of Rs.5,000/- towards medical bills, including under extra nourishment and transportation, only on the ground that the person who issued them was not examined and, therefore, sought for enhancement on all counts. On consideration of the evidence of P.W.2, and on perusal of documents Exs.A-2 and A-4, wound certificate and bunch of medical bills, the amount of compensation of Rs.5,000/-, awarded under the head of medical expenditure, is enhanced to Rs.20,000/-.

11. It is further submitted that the Tribunal has not separately awarded any amount towards, transportation and extra nourishment but included the same under the head of medical expenditure. Therefore, keeping in view of the nature of injuries suffered by the appellant and the treatment undergone by him, an amount of Rs.10,000/- is awarded towards transportation and extra nourishment.

12. It is further submitted that the Tribunal has erroneously fixed the disability at 20% though the medical officer, P.W.2, categorically stated that there is 30% disability. Ex.A-6 - wound certificate also shows that the disability was 30%. Hence, finding of the Tribunal in fixing the disability at 20% does not appear to be on any basis. Only on appearance of the appellant before the District Medical Board, Nalgonda, Ex.A-6 wound certificate was issued by the Medical

Board, wherein it was opined that it was a case of post operative inter capsular fracture neck of femur right side and he cannot do all the works as he used to attend prior to the accident. Though the Medical Board, constituted for the purpose of assessment of disability, has fixed the disability at 30%, the Tribunal erroneously assessed the disability only at 20%. It is also pertinent to note that the disability suffered by the appellant is functional disability; therefore, the same is taken into consideration as 30%.

13. On the other hand, the income of the appellant was taken as Rs.1,500/- p.m., when the appellant claims that he was getting Rs.7,000/- p.m. by attending agricultural coolie works. As on the date of accident, monthly income of an unskilled labourer was about Rs.3,000/-. Hence, as per the Minimum Wages Act, 1948, and also in view of the principles laid down by the Apex Court in *Ramesh Singh Vs. Satbir Singh*[1], *New India Assurance Company Limited Vs. Smt. Shanti Pathak*[2], *Oriental Insurance Company Limited Vs. Syed Ibrahim*[3], *New India Assurance Company Limited Vs. Smt. Kalpana*[4], a decision of High Court of Karnataka at Bangalore in *Sri Appayachari Vs. K. Vadivel and the New India Assurance Company Limited, Rep. by its Manager*[5] and a decision of High Court of Calcutta in *United India Insurance Company Limited Vs. Shri Buro Mahara*[6], income of the appellant in the instant case can be taken into consideration as Rs.3,000/- p.m. and,

[1] MANU/SC/7089/2008
[2] MANU/SC/7776/2007
[3] MANU/SC/7915/2007
[4] (2007) 3 SCC 538
[5] MANU/KA/3721/2013
[6] MANU/WB/0139/2015

accordingly, his annual income would come to Rs.36,000/-. In *Raj Kumar Vs. Ajay Kumar and another*[7], the Apex Court explained about the assessment of functional disability and no necessity to deduct any amount towards personal and living expenses of the appellant-injured in the case of fatal accidents resulting in deaths. Accordingly, if the notional annual income of Rs.36,000/- is multiplied with the relevant multiplicand '13', as per the principle laid down by the Apex Court in *Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another*[8], the same would come to Rs.4,68,000/-. The appellant has suffered 30% disability, as per the evidence of P.W.2, and 30% out of the notional annual income of Rs.4,68,000/- is taken into consideration, the amount of compensation to be awarded under the head of permanent disability would come to Rs.1,40,400/- but the Tribunal erroneously fixed the disability at 20% and awarded only Rs.46,800/-, which is on lower side.

14. Considering the material available on record including the impugned order of the Tribunal, the following is the tabular form showing the amount of compensation awarded by the Tribunal and enhanced by this Court under each head:

Sl.No.	Name of Head	Awarded by Tribunal	Awarded by this Court
01.	Medical expenses, transportation and extra nourishment	Rs.5,000/-	(only for medical expenses) Rs.20,000/-
02.	Transportation and extra nourishment	---	Rs.10,000/-
03.	Permanent disability	Rs.46,800/-	Rs.1,40,400/-
TOTAL		Rs.51,800/-	Rs.1,70,400/-

[7] 2011 (1) SCC 343
[8] 2009 (6) SCC 121

15. Accordingly, the Appeal is allowed in part, enhancing the compensation awarded by the Tribunal from Rs.51,800/- to Rs.1,70,400/-, keeping intact the rate of interest awarded and other conditions imposed by the Tribunal. Respondents 1 and 2 are jointly and severally liable to pay the compensation. They are directed to deposit the compensation amount within two (2) 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 can be withdrawn after expiry of appeal time.

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

G. SHYAM PRASAD, J

Date: 02.02.2017.
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HON'BLE SRI JUSTICE G. SHYAM PRASAD

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