

HON'BLE MS. JUSTICE J. UMA DEVI

MACMA NO. 85 OF 2008

JUDGMENT:

Against the award dated 23.11.2007 passed in OP No. 3159 of 2005 on the file of the V-Addl. Metropolitan Sessions Judge (Mahila Court)-cum-XIX-Addl. Chief Judge, City Criminal Courts, at Hyderabad (for short "the Tribunal") present appeal is filed by Haroon Rasheed @ Mohd. Ibrahim Khan, the claimant in the aforementioned OP.

The parties will hereinafter be referred to as they are arrayed in the aforementioned OP.

The factual background of the case is briefly stated as follows,

The petitioner laid the claim against the respondents 1 and 2 who were the owner and insurer of Tata Indica Car bearing No. AP 20 U 9727 due to the negligent driving of which by its driver, he met with a road accident and received injuries. It was contented by him that on 1.12.2005 at about 3.30 A.M. while he was proceeding towards Yakuthpura from Chaderghat on a motor cycle along with his friend, and when they reached near Sohel hotel, a Tata Indica Car bearing No. AP 20 U 9727 came in wrong direction in a rash and negligent manner and dashed their motor cycle, as a result of it, he received fracture injuries to right thigh bone and to mandibular bone. Immediately after the accident he was taken to Osmania General

Hospital, Hyderabad and there he obtained treatment from 1.12.2005 to 4.12.2005. Thereafter he was taken to Bhagavan Devi Hospital for better treatment and there he was operated on 8.12.2005 for correction of mandible bone. He was advised to do physiotherapy and was discharged on 16.12.2005 with an advice to come for review. He spent a substantial amount towards medical expenditure. Since the accident in question occurred due to the negligent driving of the Tata Indica Car bearing No. AP 20 U 9727, he laid the claim for compensation 2.50 lakhs against the owner and insurer of it.

The Tribunal, on appreciation of the evidence of the petitioner and also the doctors whom he examined as PWs 2 and 3 to establish the treatment taken by him in Bhagavan Devi Hospital and Osmania General Hospital and other documents such as Exs.A4 to A5 and X1, awarded compensation of Rs.1,58,000/-. The petitioner, having not been satisfied with the compensation awarded by the Tribunal, came before this Court by preferring the present appeal.

It is contended by the petitioner/appellant that despite the production of the evidence by him for establishing the disability attained due to fracture of right thigh, the Tribunal has assessed the disability at 5% in contravention of the evidence given by P.W.3 who, in clear terms, stated that the petitioner is suffering from disability of 25%. It is also contended by the petitioner that no amount is awarded under the head of loss of future earnings and that the award under

challenge is suffering from serious infirmities, as the evidence on record has not been thoroughly appreciated by the Tribunal while granting compensation to the petitioner. Since these being the contentions urged by the petitioner, I am not inclined to go into the other findings recorded by the Tribunal except the findings recorded by it on the aspect of quantum of compensation.

It is noticed from the contents of the award passed by the Tribunal that the petitioner was taken to Osmania General Hospital soon after the accident and there P.W.3, an Assistant Professor of Orthopaedic examined him and noticed fracture to right thigh and fracture to mandible bone. The petitioner was taken to Bhagavan Devi Hospital and there he underwent surgery for correction of the mandible bone and was treated there as an inpatient upto 16.12.2005 from 4.12.2005. The Tribunal, on close scrutiny of the evidence of P.W.2 and also the discharge summary card-Ex.A2, awarded compensation of Rs.30,000/- wherefrom it noticed that the petitioner obtained treatment as an inpatient for fractures to right thigh and mandible bone for a period of 12 days. The amount of compensation awarded by the Tribunal under the head of pain and suffering, in my view, is also fair and reasonable. The Tribunal, on close scrutiny of Exs.A3 and A4 medical bills which established the factum of incurring an expenditure of Rs.55,942/-, awarded the said amount under the head of medical expenditure. The Tribunal, on scrutiny of

the evidence of P.W.2, who stated that the petitioner has to undergo surgery for removal of implant for which he may have to incur a sum of Rs.25,000/-, awarded the said amount under the head of future surgery. The Tribunal, on consideration of the fact that the petitioner had taken treatment in Osmania General Hospital and Bhagavan Devi hospital for a total period of 15 days, awarded a sum of Rs.10,000/- towards incidental expenditure like transportation and other expenditure. The Tribunal also awarded compensation of Rs.10,000/- to the petitioner under the head of future amenities of life and Rs.6,000/- under the head of loss of income during the period of his hospitalization for a period of three months @ Rs.2,000/- per month

Though the Tribunal came to the opinion that the evidence of doctors – PWs 2 and 3 can be taken into consideration to assess the compensation, it appeared to have not appreciated the evidence given by P.W.3, the Assistant Professor Orthopaedic Surgeon in Osmania General Hospital from whom the petitioner had taken treatment at the initial point of time in a proper perspective. It was deposed by P.W.3 in his evidence that on 1.12.2005 the petitioner was admitted in their hospital with fracture injuries to right thigh and mandible bone and was discharged on 4.12.2005 against the medical advice, and that he again came to their hospital on 21.7.2007 for review, and that he was told by him that he took treatment in Bhagavan Devi Hospital; when he came to him, he complained pain and difficulty in squatting. On

examining him, he noticed tenderness and painful restriction of movements of right leg, and that he was having the disability of 25%. The Tribunal, contrary to the evidence given by P.W.3 who stated that the petitioner is having disability of 25%, assessed the disability at 5% without any basis. The assessment of disability made by the Tribunal discarding the evidence given by P.W.3 who when examined the petitioner, found tenderness at the fractured site of the right leg and that its movement was found restricted, made me to hold that the Tribunal erred in awarding compensation on assessing the disability at 5%. Since no sound reasoning was given by the Tribunal for assessing the disability of 5% and that the assessment was made without proper appreciation of the evidence given by P.W.3, the award under challenge, in my view, requires the intervention of this Court.

As it is evident from the testimony of P.W.3 that there is terminal degree of restriction, the same certainly hampers his work, the assessment of disability of the petitioner can be assessed at 15% instead of 5%. It is clear from the evidence of P.W.3 that when he examined the petitioner, he noticed painful restriction of movement of right leg and that he was feeling it difficult to squat etc.

The Tribunal fixed the monthly income of the petitioner at Rs.2,000/-. Since this Court has assessed the disability of the petitioner at 15%, the loss of income with the disability of 15% comes

to Rs.300/- per month, and Rs.3,600/- per annum. If the same is multiplied by 17, the loss of income comes to Rs.61,200/-. Thus the petitioner, in all, is entitled to get compensation of Rs.1,98,142 and the same is rounded off to Rs.2,00,000/- (Rupees Two Lakhs only).

In the light of the discussion made above, the award under challenge needs to be modified to the extent indicated above. The enhanced compensation shall carry interest @ 7% per annum from the date of claim petition till the date of realization and the same shall be payable by the respondents 1 and 2 jointly and severally.

Accordingly the appeal is partly allowed. Miscellaneous applications, if any pending, shall stand closed. No costs.

Dt. 26.7.2018
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J. UMA DEVI, J