

THE HON'BLE MS. JUSTICE J. UMA DEVI

M.A.C.M.A.No.294 of 2008

JUDGMENT:

1. Against the order in O.P.No.359 of 2005 dated 28.09.2007 on the file of the Motor Accidents Claims Tribunal-cum-VI Additional District Judge (F.T.C.), Gooty, the present appeal is filed by the claimant in the aforementioned O.P. with the main grievance that adequate and reasonable compensation has not been awarded to him in respect of grievous injuries received by him in the accident dated 19.12.2004.

2. The case of the claimant is that on 19.12.2004 at about 5.00 A.M. while he was proceeding in a lorry bearing No.A.P.-02-U-6644 as a cleaner to Kolhapur from Tadipatri, the lorry was driven by its driver in a rash and negligent manner with high speed and dashed against Nalavada bridge situated between Gadag and Hubli, as a result of the same, it fell into a ditch which was to a depth of 22 to 25 feet and the claimant received Grade-II compound fracture to right tibia and multiple abrasions to right thigh apart from an injury to abdomen. The claimant was shifted to Shakunthala Memorial Hospital and Research Centre, Hubli, and there he underwent surgeries to right tibia and to the injury to stomach; he was treated as an inpatient up to 30.12.2004 in the said hospital. Later, he was shifted to C.V.R. Nursing Home at Tadipatri. After he was discharged from the said C.V.R. Nursing Home, he took treatment in Orthopedic Centres at Tadipatri and Anantapur. Police of

Navalagunda Taluk, Dharwad District, registered a case in Crime No.89 of 2004 against the driver of the offending lorry bearing No.A.P.-02-U-6644. The claimant further asserted that prior to his involvement in the accident he was getting monthly salary of Rs.1500/- apart from daily batta of Rs.100/-. Thus, in total he was earning Rs.3,000/- to Rs.3,500/- per month by working as a Cleaner for the lorry of the 1st respondent. As he became incapable of attending to the work of lorry cleaner due to receiving of fracture to right tibia, he laid the claim against the respondents for a sum of Rs.2,00,000/-. The Tribunal on appreciation of evidence of P.Ws.1 to 4 and Exs.A1 to A22 and Exs.X1 to X3, awarded compensation of Rs.57,000/-. Having not been satisfied with the compensation so awarded, the claimant approached this Court seeking enhancement of compensation.

3. The appeal filed against the 1st respondent is dismissed for default as he does not choose to appear before this Court either in person or through a counsel even after service of notice on him. The Insurance Company alone contested this appeal.

4. Learned Counsel for the appellant contended that the evidence of P.W.3-Doctor, who assessed the disability of the appellant-claimant at 25%, has not been properly appreciated by the Tribunal. The Tribunal instead of awarding reasonable compensation under the head of loss of earnings, has awarded a meagre compensation of Rs.15,000/- though he could prove that he

is not in a position to attend to the work of cleaner which he was doing prior to his involvement in the accident and was earning more than Rs.3,000/- per month. The compensation amount awarded under the heads of pain and suffering, loss of income, extra nourishment, attendant charges and medical expenses is also very meagre and low.

5. I have gone through the order impugned in present appeal and also the oral and documentary evidence available in the case record.

6. It is evident from the oral testimony of P.W.1 that the lorry was driven in a rash and negligent manner by its driver, as a result of it, the lorry dashed against a bridge, and it fell into a ditch which was to a depth of 20 to 25 feet. As noticed from the contents of Ex.A5/M.V.I. report, the wall of the bridge was also damaged. The Tribunal, relying on the evidence of P.W.1, who deposed in clear terms that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No. A.P.-02-U-6644 in which he was traveling at the relevant point of time as its cleaner and also the documentary evidence available in the case record had arrived a right conclusion that the driver of the lorry bearing No.A.P.-02-U-6644 was at fault and due to the negligent driving of the offending lorry, the accident in question had taken place and thus the claimant received injuries.

7. Coming to the question relating to the quantum of compensation is concerned, the Tribunal on appreciation of evidence of P.W.1 and Ex.A7-Wound Certificate, which clearly would indicate that the claimant sustained Grade II compound fracture to his right tibia, multiple abrasions over right thigh and blunt injury over abdomen, awarded compensation of Rs.10,000/- under the head of pain and suffering. The compensation so awarded, under the head of pain and suffering appears to be fair and reasonable, the same has not been revised or enhanced.

8. The contention of the appellant that he was earning Rs.3,000/- to Rs.3,500/- per month by working as a Cleaner under respondent No.1 was negated by the Tribunal as he did not file any proof regarding his monthly earnings at Rs.3,000/- or Rs.3,500/- However, the Tribunal fixed the monthly earnings of the claimant at Rs.1500/- per month. Since the claimant had taken bed rest for three months for the two grievous injuries received by him, the Tribunal awarded compensation of Rs.4,500/- under the head of loss of income during the period of treatment. As the amount so awarded appears to be just and reasonable, it has not been revised or modified.

9. Since it is evident from the material on record that the claimant had taken treatment in various other hospitals for the injuries sustained by him, he must have incurred substantial amount

towards transport charges. Therefore, I feel it appropriate to award Rs.2,000/- under the head of transportation charges.

10. The contention raised by the appellant-claimant that he became disabled permanently due to compound fracture to his right tibia was not properly dealt with by the Tribunal. It is evident from the recitals of Ex.A7 that the claimant sustained Grade II compound fracture to right tibia, multiple abrasions over right thigh and a blunt injury over abdomen and for the said injuries, he took treatment under the care and supervision of P.Ws.3 and 4 at Shakunthala Memorial Hospital, Hubli at the initial point of time. It appeared that the appellant-claimant underwent surgery for fixation of steel plates to bring the fractured leg to the normal position. Ex.A8-Medical Certificate issued by Shakunthala Memorial Hospital, Hubli, would disclose that the appellant-claimant was treated as an inpatient in the aforementioned hospital up to 30.12.2004. Though an amount of Rs.80,000/- was claimed under the head of medical expenditure, a sum of Rs.25,000/- was awarded by the Tribunal. The same, in my view, is not just and reasonable. It appears that the bunch of medical bills relied on by the appellant-claimant were not taken into consideration by the Tribunal for the reason that the person concerning to the said bills was not examined. In the instant case, the injuries received by the claimant made him to take treatment in several other hospitals by spending huge amounts towards medical expenditure and attendant charges. The Tribunal

ought to have awarded reasonable compensation under the head of medical expenditure and attendant charges taking into consideration the aforementioned aspects. It is evident from the material on record that the claimant had taken treatment in V.C.R. Nursing Home, Tadipatri, so also in other hospitals, after he was discharged from Shakunthala Memorial Hospital, Hubli. Therefore, the compensation of 25,000/- awarded by the Tribunal under the head of medical expenditure considered to be low and meagre and the same is enhanced to Rs.50,000/- from Rs.25,000/-.

11. It is not in dispute that the appellant-claimant was forced to took treatment in several hospitals due to receiving of compound fracture to his right tibia. He took treatment in Shakunthala Memorial Hospital, Hubli, at the initial point of time and in the hospitals of Tadipatri and Anantapur afterwards. Though these facts were borne out by record, the Tribunal had awarded a meagre amount of Rs.1500/- towards attendant charges and Rs.1000/- towards extra nourishment. Therefore, I hereby enhance the compensation awarded under the head of attendant charges to Rs.4,000/- from Rs.1500/-. Similarly the compensation amount awarded under the head of extra nourishment is also enhanced to Rs.3,000/- from Rs.1000/-.

12. Coming to the compensation awarded under the head of loss of future earnings due to attainment of disability and on account of fracture injury to right leg is concerned, it is evident from the

material on record that the claimant has examined P.W.3- Dr.Venkatesh Mulimani under whose care and supervision he took treatment up to 30.06.2007 in Shakunthala Memorial Hospital, Hubli. Since the claimant was examined by P.W.3 after long lapse of time from the date of accident, the Tribunal had not taken the evidence of P.W.3 into consideration. The reasoning given by the Tribunal to discard the evidence of P.W.3, in my view, is not correct. The claimant took treatment from P.W.3 at the initial point of time. P.W.3 assessed the disability of the claimant at 25%. Since the claimant had not obtained disability certificate from the competent authority i.e., Medical Board, Anantapur, and as he was able to attend to his duties with some discomfort, the Tribunal treated the disability attained by the claimant as partial. The discomfort or inconvenience that the claimant has to face in attending to his normal works has not been denied or disputed. Taking into consideration the evidence of P.W.1 that he was getting salary of Rs.1500/- per month by working as a Cleaner under respondent No.1 and the percentage of disability as per Ex.X1-Disability Certificate at 25%, the loss of future earnings per month would come to Rs.375/- (Rs.1500/- x 25%) and per annum to Rs.4,500/-. Since the claimant was aged about 22 years by the date of accident, the appropriate multiplier to be applied is '17'. If the annual loss of future income is multiplied by '17', the total loss of future earnings due to disability would come to Rs.76,500/- (Rs.4,500/- x 17). The

appellant-claimant thus, entitled to get the following amounts under various heads towards compensation:

1. Pain and suffering	.. Rs. 10,000/-
2. Loss of income	..Rs. 4,500/-
3. Transportation charges	..Rs. 2,000/-
4. Medical expenses	.. Rs. 50,000/-
5. Attendant charges	..Rs. 4,000/-
6. Extra nourishment	.. Rs. 3,000/-
7. Loss of future earnings due to disability	.. Rs. 76,500/-
	Rs.1,50,000/-

13. Though the 2nd respondent took a plea that he purchased the offending lorry from the 1st respondent, the said lorry was not transferred in his name by the date of accident. The Tribunal, on consideration of the aforementioned aspect, had made respondent Nos.1 and 3 alone liable to pay the awarded compensation to the appellant-claimant.

14. In the light of my aforementioned discussion, the appeal is allowed in part awarding compensation of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only) together with interest @ 7.5% per annum from the date of filing of the claim petition till the date of realization and it shall be paid by respondent Nos.1 and 3 jointly and severally. The appellant-claimant is permitted to withdraw the compensation amount at once. Miscellaneous applications, if any pending in this appeal, shall stand closed. No order as to costs.

JUSTICE J. UMA DEVI

Dated:31..07.2018
Gsn

