

THE HON'BLE MS. JUSTICE J. UMA DEVI

MACMA NO. 974 of 2010

JUDGMENT:

Against the award dated 5.1.2010 in MVOP No. 741 of 2007 on the file of the Motor Accident Claims Tribunal-cum-I-Addl. District and Sessions Judge, Ranga Reddy district at LB Nagar the present appeal is filed by Sri Pampari Srinivas, the claimant in the aforementioned OP, contending that he has not been awarded with fair and reasonable compensation in respect of the fracture injuries he received to his left leg in the accident dated 22.12.2006.

For the sake of convenience, the parties will hereinafter be referred to as 'the petitioner' and 'the respondents' as they are arrayed in the aforementioned OP.

The facts which led to filing of the present appeal are briefly stated as under,

The appellant is the petitioner in OP No. 741 of 2007 which he filed for compensation of Rs.2.50 lakhs as against the respondents 1 and 2. His assertion is that on 22.12.2006 at about 6.45 P.M. while he was proceeding on his scooter bearing No. AP 9 Q 1661 from Ghatkesar to Uppal along with his friend, when they reached Peerjadiguda Kaman, their scooter was hit by an RTC bus bearing No. AP-11-Z-2839 which was driven by its driver in a rash and negligent manner and as the result of it, himself and his friend fell down and sustained multiple injuries. They were taken to Gandhi Hospital, Secunderabad for treatment immediately after the accident. In the

aforementioned accident he sustained Grade-I compound fracture to both bones of left leg and was provided with treatment as an inpatient in the Gandhi Hospital, Secunderabad. It was further asserted by the petitioner that he was earning Rs.4,500/- per month by attending to centering work. As he became incapable of attending to any work because of the fracture injury he received to both bones of his left leg, he lost the source of his livelihood. Therefore, he laid the claim for compensation of Rs.2.50 lakhs as against the respondents 1 and 2.

In the counter filed by the respondents 1 and 2 the mode of accident was denied. They also contended that the claim of the petitioner is excessive and imaginary.

The petitioner, to prove his case, examined himself as P.W.1 and Dr. G.Subash Rao as P.W.2 and marked Exs.A1 to A10. The Tribunal, relying on the oral testimony of PW1 and Exs.A1 to A4, came to the opinion that the accident dated 22.12.2006 in which the petitioner sustained a grievous injury was caused by the driver of the RTC bus bearing No. AP-11-Z-2839 which dashed the scooter on which the petitioner was proceeding along with his friend at the relevant point of time. As the evidence given by P.W.1 regarding the manner of accident was cogent and convincing and was corroborated on all aspects with the documentary evidence produced by him, the Tribunal arrived to a conclusion that the driver of the RTC bus bearing No. AP-11-Z-2839 was at fault and due to the negligent driving of the aforesaid bus by him, the accident in question occurred.

This appeal is filed by the petitioner ventilating his grievance that no reasonable and fair compensation is awarded to him though evidence on record clinchingly establishes his inability to sit and squat and unable to attend to heavy work, and attainment of disability of 35%, and development of limping due to fracture of both bones of left leg.

I have perused the order under appeal and also the evidence on record. It is deposed by the petitioner in his evidence that he received grievous injury to his left leg and for the said injury he has taken treatment in Gandhi Hospital at Secunderabad. The evidence given by P.W.2 clinchingly establishes the fact that the petitioner is unable to sit and squat, and that he cannot attend to heavy work etc. So far as these factual aspects deposed by P.W.1, there is no quarrel and the evidence given by P.W.2 as to the inability of the petitioner to attend to heavy work has remained uncontroversial. It is evident from the material on record that the petitioner was aged 22 years when he met with the accident. The respondents had not adduced any evidence disputing the evidence given by P.W.1 that he was attending to centering work prior to the accident. The Tribunal, though assessed the income of the petitioner roughly at Rs.3,000/- per month taking into consideration of the evidence given by him as to his avocation, awarded a sum of Rs.6,000/- under the head of loss of past earnings for two months, it did not award fair and reasonable compensation to him towards loss of future earnings with the disability of 35%. The reliable evidence adduced by the petitioner through P.W.2 as to his

inability to attend to heavy work was not taken into consideration. The aforementioned facts and circumstances which are proved by the petitioner through reliable evidence have made this Court to intervene, and to hold that the Tribunal has not granted fair and reasonable compensation to the petitioner though dependable evidence is there on record as to the loss of earning capacity of the petitioner due to fracture injuries to both bones of left leg. It is evident from the material on record particularly from Exs.A3 and A4 that the petitioner has received Grade-I compound fracture injuries to both bones of left leg due to which limping is developed (as deposed by P.W.2). The Tribunal seems to have discarded the evidence given by P.W.2 as to the inability of the petitioner to sit and squat and unable to attend to heavy work, only for the reason that he is not a doctor who treated him. This view of the Tribunal is not proper and correct. P.W.2 has deposed about the difficulty of the petitioner to sit and squat, and has stated that the petitioner is unable to do heavy work on examining him clinically. It may be true that P.W.2 had not attended on the petitioner when he took treatment in the Gandhi Hospital, Secunderabad, but he examined him personally, and noticed the difficulties which he is having. He being a medical expert can assess the disability by examining the persons clinically. In the given case the difficulties or inconveniences that are being faced by the petitioner are noticed by P.W.2 by examining him clinically and the disability is assessed at 35%.

As the Tribunal has granted compensation of Rs.6,000/- under the head of loss of past earnings taking into consideration of the income of the petitioner at Rs.3,000/- per month by considering him as an ordinary cooli, the same has not been disturbed.

If the income of the petitioner is taken at Rs.3,000/- per month, his monthly loss of income comes to Rs.1050/- with the disability of 35%, and per annum it comes to Rs.12,600/- per annum. If the annual loss of income Rs.12,600/- is multiplied with appropriate multiplier '17', (as the petitioner was aged about 22 years by the date of the accident), the loss of future income comes Rs.2,14,200/-.

The Tribunal, taking note of the evidence available in the case record, has rightly awarded compensation of Rs.10,000/- towards medical expenditure and other incidental expenditure such as extra nourishment and attendant charges and Rs.1,000/- under the head of transportation. The Tribunal seems to have awarded compensation of Rs.5,000/- in respect of grievous injury received by the petitioner and Rs.1,000/- in respect of simple injury received by him. As such amounts appear to be reasonable, the same are not modified or revised. The petitioner is thus entitled to get total compensation of Rs.2,37,200/- and the same is converted in round figure of Rs.2,37,000/-.

In the light of my aforementioned discussion, the appeal filed by the petitioner is partly allowed enhancing the compensation from Rs.23,000/- to Rs.2,37,000/- (Rupees Two Lakhs and Thirty Seven Thousands only) and the same is payable by the respondents along

with interest @ 7.5% per annum from the date of petition till the date of realization. Miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

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JUSTICE J. UMA DEVI

Dt.14.8.2018  
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