

HON'BLE Ms. JUSTICE J.UMA DEVI

M.A.C.M.A.No. 2025 of 2010

ORDER:

The claimant in OP No.884 of 2008 on the file of the II Additional District Judge-cum-Motor Accidents Claims Tribunal, Visakhapatnam, has preferred this appeal, not being satisfied with the compensation of Rs.25,000/- awarded by the court below in respect of the fracture injury sustained by him in the accident that occurred on 06.04.2008.

For the sake of convenience, 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 was the injured, Respondent No.1 was the owner of the accident scooter bearing No.AP 31 E 6671 and respondent No.2 was the Insurance Company.

On 06.04.2008 while the petitioner was going by foot at Isukathota junction to go to a bus stop, one scooter bearing No. AP 31 E 6671 driven by its driver came in a rash and negligent manner at high speed and dashed the petitioner, due to which, he fell down and sustained grievous injury of fracture of both bones of right radius of right leg and injury to his right foot apart from injuries all over his body. Immediately after the accident, the petitioner was shifted to

K.G.Hospital, Visakhapatnam for treatment, and that he underwent major surgery. The petitioner incurred huge medical expenditure for his treatment. Since the accident occurred only due to the rash and negligent driving of the driver of the vehicle, a case in Crime No.95/2008 was registered by the III Town Traffic Police Station, Visakhapatnam, against him. As the driver of the scooter was responsible for causing the accident, due to which the petitioner became disabled and incapable of attending to labour work, which he was doing prior to the accident and incurred huge expenditure towards treatment, he laid a claim against the owner and the insurer of the offending scooter bearing No.AP 31E 6671 for a sum of Rs.1,00,000/-.

Before the court below, respondent No.1 being owner of the vehicle, was set-exparte.

The contesting respondent No.2 filed its counter denying the material allegations made in the petition and *inter-alia* contended that the burden was on the petitioner to prove that he sustained injuries due to the rash and negligent driving of the driver of the offending vehicle. It was also pleaded by respondent No.2 that at the time of accident, the driver of the scooter had no valid driving licence and that the terms and conditions of the policy are breached by the owner of the scooter by handing over the scooter to a person, who does not possess valid driving

licence. Therefore, the insurance company cannot be held liable to pay compensation to the petitioner.

After framing of issues by the court below, the petitioner in support of his contentions raised in the claim petition, examined himself as P.W.1 and the Doctor, who issued disability certificate, was examined as P.W.2 and documents Exs.A1 to A10 were marked. On behalf of Insurance company, no evidence was adduced and with the consent, Ex-B1 policy was marked.

The trial court on appreciation of oral and documentary evidence available on record, held that the accident occurred due to rash and negligent driving of the driver of the scooter and, accordingly, awarded compensation of Rs.25,000/- with proportionate cost and interest thereon at the rate of 7.5% p.a. from the date of petition till the date of deposit of the awarded amount and that both the respondents were jointly and severally held liable to pay the said compensation amount to the petitioner. Being dissatisfied with the award so passed, the injured - claimant approached this court by filing the present appeal raising a prime contention that he was not adequately compensated.

Heard both sides.

It is contended by the learned counsel for the petitioner that the court below erred in appreciating the oral and documentary evidence,

which clinchingly establishes the factum of receiving fracture injury by the petitioner on the right radius of his fore arm wrist and sustained 25% disability, due to which, he is unable to carry weights, which is requiring for attending labour work. It is also pleaded by the petitioner that the amount of Rs.15,000/- and Rs.25,000/- awarded towards pain and suffering and loss of earning power is very meager and low. It is also contended that Exs.A6 and A7 medical bills, though clinchingly establish the factum of incurring huge amounts towards medical expenditure, the court below without proper appreciating of the same, has awarded an amount of Rs.9,000/-. Therefore, sought for enhancement of compensation in appeal.

On the other hand, the respondent No.2-insurance company which alone contested the appeal, has contended that the petitioner failed to place the evidence on record to establish his earnings as a labourer and that therefore, the compensation amount awarded by the court below under all heads is just and reasonable and the award impugned does not suffer from any patent irregularity warranting interference of this court.

Perused the record as well as the impugned award. Upon hearing of the submission of both sides, it is understood that there is no dispute with regard to the alleged accident. The only point which remains for

consideration in this appeal is whether the compensation granted by the court below is just and reasonable ? Since the present appeal related to quantum of compensation, the other aspects though were not expected to be addressed, the evidence available as to the manner of the accident and the finding recorded in this regard were as follows:

The court below examined P.W.1-claimant to prove the manner in which the alleged accident occurred and the injuries sustained by him. His evidence was not disputed by respondent No.2-insurance company and no attempt was made to disprove the same by examining any of the witnesses. The petitioner was treated in K.G.Hospital, Visakhapatnam. A criminal prosecution was launched under Ex-A1-FIR against the driver of the offending vehicle. The court below by relying on the sole testimony of P.W.1, which was supported by Exs.A1, A3 and A4 on all aspects held that the alleged accident occurred due to rash and negligence driving of the offending vehicle (scooter) by its rider and such accident resulted fracture injury to his right forearm and wrist, and to his foot and to his head and other parts of his body.

To prove the injuries, claimant produced the Ex.A4- wound certificate issued by P.W.2, Doctor, which would disclose that he sustained fracture injury to right radius, a lacerated injury to temporal region and an abrasion on the dorsum of his fore arm. Out of the above

injuries, the injury to right forearm and wrist were grievous in nature for which, he was treated in K.G.Hospital. Considering the above, the court below awarded an amount of Rs.15,000/- to the petitioner under the head of pain and suffering.

The petitioner produced the medical bills and they were marked as exhibits. The doctor, who was examined as P.W.2 deposed that the petitioner got restriction of pronation and supination of right forearm and he gets pain while lifting weights and as such disability is assessed at 25% and the same was partial and permanent in nature. As per Exs.A4 & Ex.A8-wound certificate and disability certificate respectively, the petitioner suffered with a major injury to right forearm, due to which his earning capacity was impaired substantially. The disability attained by the petitioner was amply proved by examining P.W.2 and by exhibiting Ex.A8.

As it is felt that amount of Rs.15,000/- awarded under the head of pain and suffering is meager and low and the same is enhanced to Rs.20,000/- from Rs.15,000/- under the head of pain and suffering.

The court below while passing the impugned award, did not consider the amount expended by the petitioner towards medical expenditure and extra nourishment, though it was abundantly proved by the petitioner that substantial amounts were spent by him towards medicines and

treatment by way of producing of Ex.A6 and A7- medical bills. The factum of sustaining injuries by the petitioner and the treatment taken by him at K.G.Hospital, Visakhapatnam, has not been disputed by the respondent. A person, who receives a fracture injury to right fore arm and the movements of which are restricted, necessarily has to take treatment for a considerable period. Taking into consideration of the aforementioned aspect, the court below ought to have awarded reasonable amount under the head of medical expenditure, as the factum of receiving fracture injury to fore arm and the treatment taken by him for such injury in K.G.H. Hospital, Visakhapatnam were proved. Taking note of the fact that the petitioner received a major fracture injury to right fore arm, this Court is of the considered view that the petitioner is entitled to Rs.9,000/- towards medical expenditure, extra nourishment and transport charges.

On a perusal of the award under challenge, it is understood that a sum of Rs.10,000/- is awarded under the head of loss of earning power. It is true that no document is produced by the petitioner to establish that he was doing labour work prior to the accident. The petitioner was 39 years old by the date of the accident and he was capable of attending cooli work. It is a matter of common man understanding that an able bodied person, aged about 39 years may not remain idle and has to do one

work or the other at least for his survival. If his income of the petitioner is taken at Rs.75/- per day, considering as a daily labourer, the amount which he gets under the head of loss of future earning exceeds Rs.1,00,000/-.

If the daily income of the petitioner is taken at Rs.20/- per day, the income he earns through cooli work comes to Rs.2,250/- per month and Rs.27,000/- per annum. 25% of such income comes to Rs.6,700/- (as stated in Ex-A8-disability certificate that petitioner is having disability at 25%). If the annual loss of earning capacity of the petitioner is multiplied by 15 (petitioner is aged about 39 years as on date of accident), the appropriate multiplier as per Schedule-II comes to Rs.1,00,500/- ($\text{Rs.6,700/-} \times 15 = \text{Rs.1,00,500/-}$) under the head of loss of future earning, which exceeds to Rs.1,00,000/-.

If considering the amount awarded under the head of future expenditure, taking into consideration of the evidence of P.W.2, who deposed that the petitioner may have to incur an amount of Rs.10,000/- as he has to undergo surgery for removal of implant from the fractured right fore arm, the amount of compensation which is claimed by the petitioner exceeds Rs.1,00,000/-.

Having regard to the aforementioned aspect, this court has no hesitation to hold that there is justification in the claim made by the

petitioner for the compensation of Rs.1,00,000/- and hence, the appeal filed by the appellant/claimant deserves to be allowed.

Accordingly, the civil miscellaneous appeal is allowed by setting aside the order dated 29.07.2010 passed in MVOP No.884 of 2008 by the II Additional District Judge-cum-Chairman, Motor Accidents Claims Tribunal, Visakhapatnam and enhanced the compensation of Rs.25,000/- to Rs.1,00,000/- payable by respondent Nos.1 & 2 jointly and severally to the appellant along with interest at the rate of 7.5% per annum as awarded by the tribunal, within a period of one month from the date of receipt of a copy of the order. On such deposit, appellant is at liberty to withdraw the entire compensation amount. There shall be no order as to costs.

Miscellaneous petitions if any pending, shall stand closed.

27.12.2018
Mjl/*

J.UMA DEVI, J