

THE HON'BLE MS.JUSTICE J.UMA DEVI

M.A.C.M.A.NO.546 OF 2010

JUDGMENT:

Against the award, dated 21.02.1997 passed in O.P.No.48 of 1991 by the Chairman, Motor Accident Claims Tribunal-cum-II Addl. District and Sessions Judge, West Godavari at Eluru, the present appeal is filed by Goli Harinarayana Reddy, minor represented by his father and natural guardian Goli Venkata Ramakrishna Reddy having not been satisfied with the compensation awarded by the Court below.

2. The facts, which led the appellant to file the present appeal are briefly stated as under:

Appellant is the claimant in O.P.No.48 of 1991. It was asserted by the father of the appellant that on 07.10.1990 at 7.00 A.M., while his son was proceeding on a bicycle to supply milk; when he reached near the house of Chilukuri Muttareddy situated on the main road of Pragadavaram, a lorry bearing No. APW 8499 driven by the 1st respondent in a rash and negligent manner came with high speed opposite to the cycle of his son, without blowing horn and dashed his cycle; and as the result of it, his son fell down and sustained fracture injury to his left leg. Soon after the accident, his son was taken to Government Hospital, Chintalapudi, and

from there he was taken to Government Hospital, Guntur and there, the left leg of his son was amputated, thus his son became disable permanently. Therefore, he laid the claim for compensation of Rs.1,00,000/- (Rupees one lakh) was laid against the driver, owner and insurer of the offending lorry bearing No.APW 8499.

3. On behalf of the petitioner, P.Ws. 1 to 5 were examined and Exs.A1 to A3 were marked. The case sheet of the injured was marked as Ex.X1.

4. The driver and owner of the offending lorry remained ex parte. The Insurance Company, with whom the offending lorry was insured alone contested the case. On behalf of Insurance Company except marking of insurance policy, no other evidence was adduced.

5. The Court below on appreciation of oral and documentary evidence available in the case record, awarded compensation of Rs.60,000/-. The petitioner in O.P. who had not satisfied with the compensation awarded by the Court below, came before this Court by preferring the present appeal with a main grievance that in respect of injuries he received in the accident dated 07.10.1990 that was caused due to the negligent driving of lorry bearing

No.APW 8499 which they could prove by placing cogent evidence.

6. The order challenged in the present appeal is perused by me. I have also gone through the oral and documentary evidence available in the case record.

7. The injured was aged about 12 years by the date of the accident. The learned trial Judge on appreciation of evidence given by P.Ws. 2 and 3, who were the witnesses to the aforementioned accident and Exs.A1 and A2 held that due to negligent driving of the lorry bearing No. APW 8499 by the 1st respondent, the petitioner received fatal injury to his left leg, and the same was removed after he was taken to Government Hospital, Guntur.

8. In the instant case, there is no dispute that as to the fact that due to removal of fractured left leg, he has got the difficulty in moving from one place to another and without taking the aid of stretchers or an artificial leg, he cannot go any where. There is no evidence in his case as regard to the particulars of treatment provided to the petitioner in Government General Hospital, Guntur. P.W.4 is the doctor who has deposed about amputation of left leg of the petitioner for which he received a grievous injury in the accident, dated 07.10.1990. It appears that identifying need

of removal of left leg, same has been removed by the doctors at Government Hospital at Guntur.

9. The Court below seems to have not awarded compensation under various heads separately. The pain and trauma which the petitioner seems to have suffered though could not be compensated in terms of money, the Court below ought to have awarded reasonable sum towards compensation under the head of pain and suffering and under the head of medical expenditure. It is also found from the award under challenge that no amount is awarded to the petitioner for purchase of artificial limb. It is manifestly clear from the material on record that the petitioner has to take the support of stretchers for walking etc., It has been deposed clearly by P.W.4 that the petitioner cannot walk without the support of stretchers and that an artificial limb needs to be arranged for walking etc., Without taking into consideration the above mentioned evidence of P.W.4, the Court below has awarded lumpsum compensation of Rs.60,000/- without stating specifically that the amount which he is entitled to get under various other heads.

10. The learned trial Judge appears to have quoted two case laws reported in 19967 ACJ, 794 and 1996 ACJ, 788. In one of the cases cited by the Court below, the deceased was a student of 10th class. In other case law

cited by the Court below, the claimant suffered with compound fracture of tibia and fibula of left leg and there was shortening of $\frac{3}{4}$ inch in left leg and the disability assessed was 15%. In the said case, the injured was working as Sub-Engineer and that the compensation awarded to him was Rs.60,000/-.

11. The learned trial judge also cited another case reported in 1996 ACJ, 794 and there the injured was 15 years old and he received a fatal injury i.e., compound fracture to left leg and there was shortening of leg by $\frac{3}{4}$ inch.

12. In the present case, the injured was aged about 12 years old by the date of the accident and he was a student of V class and his left leg was amputated.

13. Though ample evidence was placed on record before the Court below as to the inability of the petitioner to walk without taking the support of stretchers by examining the medical officer who treated him, the Court below awarded compensation of Rs.60,000/-. The said compensation awarded by the Court below to the petitioner whose ability to move from one place to another was hampered and on account of removal of left leg appeared to be minimal and low.

14. The petitioner was aged about 12 years by the date of accident. Due to no fault of him, he was subjected to untold agony on account of fracture of left leg and the same was removed after he was taken to Government Hospital, Kakinada. Even it is construed that he is not an earning member, the loss of income as per the II-schedule can be assessed at Rs.15,000/- p.a. 40% of such income comes to Rs.6,000/- per annum. If the annual loss of income is multiplied by '15' (as the appropriate multiplier for the person up to the age of 15 years as per II-schedule) the compensation which he is entitled to get under the loss of earnings alone comes to Rs.90,000/-. Thus if the compensation which he is entitled to get under other heads such as pain and suffering, medical expenditure, and the expenditure he is supposed to incur for artificial limb is added, the amount which he gets towards compensation exceeds this claim of Rs.1,00,000/-. Thus, it cannot be said that there is no justification in his claim.

15. Taking into consideration of the oral and documentary evidence available on record, which clinchingly establishes the fact that the fractured left leg of the injured was removed when he was shifted to Government Hospital, Guntur, so also the inconvenience or discomfort which the injured was subjected due to its removal, the Court below

ought to have awarded compensation of Rs.1,00,000/-for which he laid the application.

16. It is manifestly clear from the material on record that the case was not contested by the respondents 1 and 2 and that the 3rd respondent also had not let in any evidence to disprove the evidence adduced by the petitioner except marking the policy copy of the crime lorry. In appeal also, there is no contest from the side of the Insurance Company. As the policy copy of the crime vehicle clinchingly establishes the fact that the crime had valid insurance with 3rd respondent as on the date of the accident, it cannot escape from the liability of payment of compensation to the claimant jointly and severally along with the 2nd respondent, who is the owner of the crime vehicle.

17. In the light of my above held discussion, the appeal filed by the claimant in O.P.No.48 of 1991 is hereby allowed awarding compensation of Rs.1,00,000/- as claimed by him. The compensation awarded is payable by the respondents 2 and 3 jointly and severally together with interest at 12% p.a. (as awarded by the Court below), from the date of petition till the date of realization. But, there shall be no order as to costs.

18. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

J.UMA DEVI, J

DATED: 07-08-2018.

Hsd

