

THE HON'BLE MS JUSTICE J.UMA DEVI

M.A.C.M.A No.1469 of 2010

JUDGMENT:

The claimant in M.V.O.P.No.793 of 2008, on the file of the Motor Accident Claims Tribunal-cum-Family-cum-Additional District Judge, East Godavari at Rajahmundry (for short "the Tribunal) has come to this court by preferring the present appeal, questioning the award passed in the aforementioned MVOP, granting compensation of Rs.32,000/- as against his claim of Rs.1,00,000/- in respect of the injury received to spleen, which has been removed subsequently and for two fractures received to his 4th and 5th ribs, which are treated conservatively, in a motor accident that occurred on 27.10.2007.

Heard both sides and perused the record.

The grievance of the appellant/claimant is that he has not been adequately compensated by the Tribunal though the evidence on record is clear to the effect that he has received an injury to his spleen, which is removed subsequently by conducting operation. The appellant also states that even after it has been established by him that he received fracture injuries to ribs, the Tribunal, without looking into the evidence adduced in this regard, awarded meager compensation of Rs.32,000/- and the compensation so awarded, is not fair and reasonable. Hence, he has been compelled to approach this court seeking to modify the award passed by the Tribunal and to grant of fair and reasonable compensation.

The claimant having pleaded that he received a severe injury to spleen and fracture injuries to ribs in the accident, dated 27.10.2007, which was caused due to the negligent driving of the lorry bearing registration No.AP5U-1188, examined himself as PW 1 and marked Exs.A1

to A5. He also examined Dr.D.S.V.L.Narasimha, who treated him, as PW 2. During course of examination of PW 2, the case sheet and X-Ray films were marked as Exs.X1 and X2.

The claimant produced a bunch of medical bills, which were marked collectively as Ex.A3 to show that he spent huge amounts towards purchase of medicines.

The Tribunal, without looking into the evidence on record, which would clinchingly establish the factum of receiving a grievous injury by the petitioner to his spleen (which was removed subsequently by conducting operation), a contusion over right side abdomen, measuring 10 x 6 cm, an abrasion measuring 4 x 3 cm on the right side of the chest and a contusion over the right hand and elbow, measuring 4 x 2 cm, awarded compensation of Rs.32,000/-, which appeared to be minimal. There appears no rationale and justification in granting such a meager sum towards compensation in respect of two grievous injuries and major injury to spleen which was removed by conducting surgery.

Therefore, the Tribunal awarded a sum of Rs.10,000/- each towards pain and suffering in respect of two grievous injuries received by the petitioner. The Tribunal also awarded a sum of Rs.2,000/- in respect of a simple injury which was said to be received by the petitioner in the aforementioned accident.

The mental agony which petitioner had undergone due to receiving of major grievous injury though could not be quantified in terms of money, the physical pain which the petitioner had undergone during the course of treatment could be imagined.

For grant of compensation under the head of "pain and suffering" which would come under non-pecuniary damages, the nature of injuries

sustained by the injured, duration of hospitalization, medical treatment, the period for which he was confined to bed, are some of the factors to be taken into account. Considering all these, the Tribunal ought to have awarded a reasonable sum towards compensation under the head of "pain and suffering". As the amount of Rs.10,000/- each awarded to the petitioner under the head of "pain and suffering" in respect of two grievous injuries appears to be minimal and low, and the same is enhanced to Rs.20,000/- for each grievous injury. Similarly, the amount of Rs.2,000/- awarded to the petitioner in respect of simple injury received by him is enhanced to Rs.5,000/-

As the amount of Rs.5,000/- awarded under the head of "loss of income during the period of treatment and attendant charges" appear to be low. The same is hereby enhanced to Rs.15,000/-.

Even; though it was stated by PW 2 that the petitioner underwent treatment from 27.10.2007 to 08.11.2007 and the petitioner incurred huge expenditure towards medical treatment, the Tribunal awarded Rs.5,000/- towards transportation charges, extra nourishment and medical expenditure. As the said sum of Rs.5,000/- awarded under the said head appears to be low, the same is hereby enhanced to Rs.15,000/-

In the light of my above held discussion, the amount of compensation which the claimant is entitled to get comes to Rs.75,000/- and the amount which he gets under the below heads is as under:

- i) Under the head of "Pain and Suffering"
for two grievous injuries @Rs.20,000/- each = Rs.40,000-00
- ii) for simple injury = Rs. 5,000-00
- iii) Under the head of "Transportation
charges, extra nourishment and
medical expenditure = Rs.15,000-00
- iv) Under the head of "loss of income

during the period of treatment and attendant charges”

= Rs.15,000-00

Total:

= Rs.75,000-00

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In the result, the MACMA is partially allowed, enhancing the compensation from Rs.32,000/- to Rs.75,000/- and the same is payable to the appellant/claimant by respondents No.1 to 3 jointly and severally together with proportionate costs and interest at 7.5% per annum from the date of petition till the date of realization. Respondents Nos.1 to 3 are directed to deposit the compensation amount, as directed above, within a period of two months from the date of receipt of a copy of this judgment. The appellant/claimant is entitled to withdraw the entire amount, as and when deposited, without furnishing any security.

Pending miscellaneous applications, if any, shall stand closed in consequence.

Date: 28th December, 2018
Dsr

J.UMA DEVI,J

