

THE HON'BLE MS. JUSTICE J. UMA DEVI

MACMA NO. 582 of 2008

JUDGMENT:

Against the order dated 22.2.2007 passed in O.P.No. 234 of 2006 on the file of the Motor Vehicle Accident Claims Tribunal-cum-II-Addl. District Judge, Karimnagar at Jagtial (for short "the Tribunal"), the present appeal is filed by the United India Insurance Company Limited represented by its Divisional Manager which has been arrayed as respondent No.3 in the aforementioned OP.

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

The factual background of the case is briefly stated as follows,

That on 27.12.2005 while the petitioner-Kasetti Narsaiah @ Akkamari Narsaiah was proceeding on a two wheeler bearing No. AP-15-Q-9238 on the pillion from Dharmapuri to Gundaiahpalle village being driven by his brother Akkamari Gundaiah @ Kasetti Gundaiah, when they reached near the house of one Vindo Rao at about 6.30 P.M., a tractor bearing No. AP-15-W-0353 and trailer bearing No. AP-15-T-5630 driven by the first respondent came from Jagtial side in a rash and negligent manner and dashed the two wheeler, as a result of it, petitioner and his brother fell down and sustained injuries. Petitioner sustained comminuted fractures of right femur, right patella and right knee and his entire leg was affected and the right knee cap was broken into pieces in the above accident. He took first aid treatment at Dharmapuri from

Dr. Raja Reddy who advised to shift him to Karimnagar, and as advised he was shifted to Karimnagar where the doctors referred him to Hyderabad for better treatment. Accordingly, the petitioner was admitted in Kamineni Wockhardt Hospital, Hyderabad where he took treatment as inpatient from 28.12.2005 to 3.1.2006 and surgery was conducted to his right leg and bone grafting was done. He was advised not to lift weighty articles and take rest for a period of two months and was further advised to undergo surgery after two years for removal of implants. Petitioner took treatment in Ortho Care Hospital, Karimnagar from 4.1.2006 to 10.1.2006 and was advised to visit the hospital for periodical dressing. He took treatment at Jagtial under the care and supervision of Dr. B. Narahari and he was regularly visiting Ortho Care Hospital, Karimnagar. The petitioner spent a sum of Rs.70,258/- towards medical expenses, hospital charges etc. He also spent considerable amounts towards incidental charges such as medicine, hospital bill, transport charges, extra-nourishment, attendant charges etc. The petitioner also claimed a sum of Rs.25,000/- towards future treatment like removal of implants. By the date of accident, the petitioner was aged about 48 years, was working as a mason and earning a sum of Rs.5,000/- per month. Because of the fracture injury he sustained to his right leg in the above accident, he attained 35% disability. He was totally bedridden for a period of nine months and could not attend any work and there is no chance of getting income as he was earning earlier due to attainment of 35% disability. The petitioner laid the claim for Rs.5.00 lakhs as against the driver, owner and

insurer of the offending tractor and trailer i.e., respondents 1 to 3 respectively.

The petitioner, in support of his case, examined himself as P.W.1 and the doctors who treated him as PWs 2 and 3 and marked Exs.A1 to A68. The Tribunal, on appreciation of the oral and documentary evidence available in the case record, awarded compensation of Rs.3,66,329/- to the petitioner/claimant in OP No. 234 of 2006 by its order dated 22.2.2007. Having been aggrieved by the award so passed, the present appeal is filed by the insurance company.

The contentions raised by the insurance company questioning the order passed by the Tribunal in precise are as follows,

That awarding a sum of Rs.50,000/- in respect of four fractures is on higher side. No reason whatsoever is assigned by the Tribunal for awarding an amount of Rs.10,000/- towards loss of future amenities. It is also the contention of the insurance company that the Tribunal erred in calculating loss of future earnings and that it has wrongly estimated the annual loss of income of the petitioner at Rs.36,000/-. The insurance company's further contention is that awarding a sum of Rs.70,779/- towards medical expenditure is against the evidence on record as a sum of Rs.61,549/- has already been granted towards hospital charges.

After going through the aforementioned contentions raised by the insurance company in this appeal, it is understood that the only dispute raised by the insurance company is in regard to quantum of compensation awarded by the Tribunal. A contention is raised by the insurance company while advancing arguments that the petitioner has travelled as a

pillion rider on two-wheeler, due to negligent driving of it, the accident took place. The established case of the petitioner is that due to negligent driving of the tractor which has got valid insurance with the present appellant/insurance company as on the date of accident, the accident in question has taken place.

I have gone through the order impugned in this appeal carefully. The petitioner, in proof of sufferance of fracture injuries, examined himself as P.W.1 and also the doctors under whose care and supervision he has taken treatment, as PWs 2 and 3. P.W.1 deposed in his evidence that he suffered fracture injuries on his right knee, right patella and right femur in the accident and took treatment from PWs 2 and 3. P.W.2, the Orthopedician in Kamineni Wockhardt Hospital, Hyderabad, deposed that on examination of the petitioner he noticed the following injuries,

- (1) Declubing injury right knee with exposure of lower end femur patella and knee joint measuring 18x 10 cms;
- (2) Contamination of wound present with sand and dust;
- (3) Comminuted grade-III B supra condylar fracture right femur with inter condylar extension;
- (4) Extensor mechanism disruption;

As per his deposition, the petitioner underwent surgery on 28.12.2005 at 5.00 A.M. for removal of patella and loose bone fragments and for fixation of DCS/plate and cancellous screws. P.W.2 also did bone grafting on the patella and discharged him on 3.1.2006 with an advice not to put weight on the right leg and fold the right knee. The petitioner attended for review before P.W.2 on 16.8.2006 as advised. The petitioner also had taken treatment under the care and supervision of

P.W.3, the consultant doctor of Ortho Care Hospital, Karimnagar. As per his evidence, the petitioner had taken treatment from him from 4.1.2006 to 10.1.2006 at Ortho Care Hospital, Karimnagar. In the evidence of PWs 2 and 3 they gave the details of the treatment taken by the petitioner as in-patient and about the surgeries he underwent for placement of rods and screws for correction of fracture which he received to the right leg.

The Tribunal, on appreciation of the oral evidence of PWs 2 and 3 and Exs.A7 to A50 awarded compensation of Rs.70,779/- towards medical expenses.

As the evidence placed by the petitioner before the Tribunal was clear to the effect that he received four fracture injuries, the Tribunal had awarded a sum of Rs.50,000/- in respect of the fracture injuries, Rs.20,000/- upon consideration of the pain and trauma which he was subjected to.

The Tribunal, upon consideration of the facts spoken to by P.Ws 2 and 3 as to the treatment taken by the petitioner in the hospital and his inability to attend to any work during the period of his hospital and the bed rest he was forced to take, had rightly awarded a sum of Rs.27,000/- towards loss of earnings during the period of treatment. The evidence of PWs 2 and 3 was also to the effect that the petitioner attained the disability of 35% on account of the fracture injuries he received to his right leg. The Tribunal, on assessing his income at Rs.3,000/- per month, had rightly awarded a sum of Rs.1,63,800/- towards loss of future earnings due to disability of 35% and Rs.10,000/- towards loss of amenities in life. On appreciation of the evidence given by P.W.2 is to

the effect that the petitioner has to undergo further surgery for removal of the rods inserted in the fractured leg, the Tribunal has rightly awarded a sum of Rs.15,000/- towards future medical expenditure, Rs.6,750/- towards transport charges and Rs.3,000/- towards extra nourishment. It is abundantly clear from the evidence on record that the petitioner was working as a mason prior to his involvement in the accident. The Tribunal, taking note of such fact, which is spoken to by the petitioner in his evidence and is supported by Ex.A55, the certificate issued by Masonry Association and Ex.A56, the identity card issued by the Masonry Association and other material on record which clinchingly establish his inability to carry weight and climbing of stair cases etc and other factual aspects borne out by the record, has granted a total compensation of Rs.3,66,329/- which, in my opinion, is fair and reasonable. Since no substantial grounds are made out by the appellant/insurance company that the order passed by the Tribunal is suffering from patent irregularity, the award under challenge deserves to be upheld.

For the reasons mentioned above, the appeal filed by the insurance company fails and the same is hereby dismissed. Miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

JUSTICE J. UMA DEVI

Dt.13.4.2018
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