

THE HON'BLE MS.JUSTICE J.UMA DEVI

M.A.C.M.A.NO.20 OF 2005

JUDGMENT:

Against the award, dated 31.08.2004 passed in O.P.No.2299 of 2001 by the IV Addl. Chief Judge-cum-Motor Accident Claims Tribunal, City Civil Court, Hyderabad, the present appeal is filed by S.Sadanand @ Saidulu, the claimant in the above mentioned O.P. with the prime contention that the compensation awarded by the Tribunal in respect of the injuries, he received in the accident, dated 20/21.10.2001 is not fair and reasonable.

2. The parties hereinafter will be referred to as they were arrayed in the trial Court in the above mentioned O.P.

3. The case of the petitioner, as narrated in his petition, is briefly stated as follows:

The petitioner states that on the intervening night of 20/21-10-2001, he had taken concrete lift machinery to Begumpet Bridge in a tractor bearing No. AIK 8324, for which, he was the driver and delivered the machinery at Begumpet. While he was returning to Warasiguda, in the same tractor, at about 0030 hours when the tractor reached near Plaza Cross roads, a lorry bearing No. APT 9999 came from left side of the tractor in a rash and negligent manner and hit the tractor which he was driving, and as the result of it, he fell down from the tractor and sustained fracture to pelvis pubic ramie. Soon after the accident, he was taken to

Gandhi Hospital, Secunderabad for treatment. The Police of Mahankali Police Station, registered a case in Cr.No.191 of 2001 under Section 337 IPC against the driver of the offending lorry. The petitioner further states that he was confined to bed and half of his body was paralyzed from waist to downwards and could not able to sit without the support of any body due to fracture injury to pubic ramie. He incurred heavy expenditure towards treatment and lost earning capacity. His wife was forced to deprive conjugal life. As he became incapable of attending to the work of driving which he was doing prior to the accident, he lost his source of livelihood. Hence, he laid the claim for compensation against the owner and insurer of the offending lorry.

4. Case was not contested by the owner of the lorry. 2nd respondent, United Insurance Company Ltd. alone contested the case.

5. The petitioner to substantiate his contention, examined himself as P.W.1 and also Dr.Y.Surender Rao as P.W.2 and relied on Exs.A1 to A7. No oral evidence was adduced by the 2nd respondent-Insurance company.

6. The learned trial Judge on appreciation of oral and documentary evidence available in the case record,

awarded compensation of Rs.31,000/- to the petitioner. The petitioner having felt that the compensation amount of Rs.31,000/- granted to him in respect of fracture injury to pubic ramie was not adequate, and fair and reasonable approached this Court by preferring the present appeal. His contention was that though he could prove that the injury received by him was grievous, and he lost the source of livelihood as he became incapable of attending to the work of driving, the Court below awarded meager compensation of Rs.31,000/-. The evidence given by P.W.2 was not taken into consideration by the Court below and no proper reasoning was given by it to discard his testimony. The Court below on placing reliance on portion of the evidence of P.W.2, came to the opinion by referring to that there exists no reliable evidence to hold that the petitioner is suffering from disability of 20% though he deposed in his entire evidence with regard to the nature of injuries received by the petitioner, details of treatment provided to him and his inability to attend to any work.

7. The order under challenge is perused by me. I have also perused the pleadings and the evidence available in the case record. It is understood after hearing to the submissions of the petitioner, that the only dispute is regarding the quantification of compensation. The main

grievance of the petitioner that the doctor whom he examined himself deposed in clear terms that he is suffering from disability of 20% due to receiving of grievous injury to pelvis pubic ramie, the Court below without recording justifiable reasons, discarded his testimony. The Court below failed to notice that he was confined to bed for more than 6 months and thus suffered loss of income during the period of his hospitalization and after he was discharged from the hospital as he was advised to take bed rest.

8. It is evident from Ex.A3-wound certificate that the petitioner received fracture injury to pelvis pubic ramie. Ex.A3-wound certificate produced by the petitioner would also show that he received lacerated injury measuring 3 x 1 x 1 cm. over the right side of abdomen and another lacerated injury measuring 1 x 1 x 1 cm. over the right iliac region. When he was taken to the hospital, he could not able to move both limbs and unable to pass urine. From the X ray taken, he issued Ex.A3 opined that there was bilateral fracture of inferior and superior pubic ramie.

9. The petitioner's contention is that due to receiving fracture injury to pubic ramie, he is unable to lead conjugal life, but, the Court below has not properly appreciated the factual aspect and also the evidence given by P.W.2, who in his evidence deposed that he is having disability of 15 to

20%. It is his further contention that the amount of Rs.20,000/- awarded to him in respect of grievous injury, for which, took treatment from P.W.2 in Gandhi Hospital, Secunderabad, for a period of 8 to 10 days is very minimal and low. He also states that his inability to lead conjugal life, and to work of driving, which he was doing prior to the accident has not been appreciated in a proper perspective by the Court below while awarding compensation. He also states that the amount of Rs.3,000/- awarded under the head of medical expenditure and a sum of Rs.5,000/- awarded under the head of pain and suffering is not fair and reasonable. He further contends that the untold agony he suffered due to receiving of fracture injury to pelvis pubic ramie has not been taken to consideration while awarding compensation under the head of pain and suffering and the amount awarded under the said head wholly unsustainable.

10. Since these being the contentions raised by the petitioner-appellant, while questioning the award passed by the Court below particularly the quantification of compensation, the entire evidence on record needs to be re-appreciated.

11. The wound certificate issued in favour of the petitioner by Gandhi Hospital, Secunderabad, shows that he received a lacerated injury measuring 3 x 1 x 1 cm. over the

right side of abdomen, lacerated injury measuring 1 x 1 x 1 cm. over the right iliac region. It appears from Ex.A7 wound certificate that he was unable to move both limbs and unable to pass urine on examining the X ray, the doctor came to the opinion that there was bilateral fracture of inferior and superior pubic ramie. It was clearly recited in Ex.A3-wound certificate that when the petitioner was admitted in Gandhi Hospital, Secunderabad for treatment, he was not in a position to move both limbs and unable to pass urine. He was given IV fluids and Urethral Cathetor was arranged after he was taken to Gandhi Hospital for treatment. Though charge sheet was filed by the police at the initial point of time under Section 337 IPC, the Section of law was altered to Section 338 IPC based on the opinion given by Dr.J.Satyanarayana, Civil Assistant Surgeon, Orthopedic-III and the Superintendent, Gandhi Hospital, Secunderabad.

12. Thus, it is evident from the material on record that the petitioner received fracture injury to pelvis pubic ramie, on account of which, he could not able to move both limbs and confined to bed for a considerable period. The Court below had awarded only Rs.20,000/- in respect of grievous injury he received. The amount which was awarded by the Court below to the petitioner in respect of grievous

injury appeared to be very low and minimal in my view and the same in my view can be enhanced to Rs.40,000/- from Rs.20,000/-.

13. The petitioner is subjected to untold agony on account of fracture injury he received to the pelvis pubic ramie. There is evidence in the case record as to the inability of the petitioner to move, due to receiving of fracture injury to pelvis pubic ramie. Taking it into consideration of the fact that he was confined to bed etc., the Court below ought to have awarded reasonable compensation under the head of pain and suffering. Since the amount of Rs.5,000/- awarded by the Court below under the head of pain and suffering appears to be unfair, the same can be enhanced to Rs.20,000/-.

14. The learned trial Judge seems to have awarded a sum of Rs.3,000/- under the head of medical expenditure without proper appreciation of Ex.A6-bunch of medical bills. As none concerning to Ex.A6 is examined, the Court below has not taken them to consideration. Despite the establishment of factum of incurring of expenditure of Rs.4,100/- by exhibiting Ex.A6, the Court below has awarded only Rs.3000/- and this appears have been in contravention of the evidence on record. Therefore, the Court hereby awards a sum of Rs.4,100/- towards medical

expenditure as it is evident from Ex.A6 that some amount is incurred by him for purchase of medicines.

15. Though ample evidence is on record to say that the petitioner could not able to move both limbs, when he was taken to hospital immediately after the accident due to fracture to pubic ramie and as to his inability to pass urine, and was provided with treatment to cure such inability by admitting him in hospital as an inpatient, during which time he was unable to attend to his normal work without the help of assistance of anybody, the Court below has not awarded any amount under the head of attendant charges, on assessing the amount which he might have incurred to take the assistance of somebody to attend to his day-to-day works roughly, this Court hereby awards a sum of Rs.5,000/- under the head of attendant charges.

16. As it appears that no amount is awarded under the head of transportation charges, this Court award a sum of Rs.2,000/- under the head of transportation charges.

17. It is evident from the material on record that the petitioner has not produced the disability certificate issued by the medical board. The evidence let in by the petitioner in this regard through P.W.2 is also not so impressive. The doctor, who has been examined the petitioner to speak about

the disability, though states in his chief-examination affidavit that there is disability of 15 to 20%, which is permanent in nature, states during the course of his cross-examination that “what I mentioned in my chief-examination affidavit as to the disability is a general statement. He did not say the disability is assessed after examining the petitioner. Looking it to the said portion of the evidence given by P.W.2 that Court below has rightly opined that the petitioner failed to prove that he became disabled permanently.

18. In the light of my above held discussion, the petitioner-claimant is entitled to get compensation of Rs.81,100/- as against Rs.31,000/-.

19. Accordingly, this appeal is partly allowed with proportionate costs. The petitioner-claimant is entitled to get compensation of Rs.81,100/-, and the same is to be paid to him by the respondents 1 and 2 jointly and severally together with interest at 7.5% p.a., from the date of petition till the date of realization.

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

J.UMA DEVI, J

DATED: 23-07-2018.

Hsd

