

THE HON'BLE MS. JUSTICE J. UMA DEVI

M.A.C.M.A.No.1894 of 2010

JUDGMENT:

The petitioner in O.P.No.304 of 2009 on the file of the XXII Additional Chief Judge-cum-Motor Accidents Claims Tribunal, City Criminal Court, Hyderabad, has preferred this appeal questioning the order dated 16.07.2010 passed in the aforementioned O.P.

2. For the sake of convenience, the parties hereinafter will be referred to as they were arrayed in the O.P.

3. The case of the appellant-claimant, as narrated in the Original Petition, is briefly said as under:

On 29.11.2008 at about 11.30 p.m, while petitioner was proceeding on a Hero Honda Splender bearing No.AP11J 4754 as a pillion rider from Puranapool to Dadban, when their motor cycle reached near Bajaj show room, a mini vehicle bearing No.AP 9TA 0351 hit their motor cycle, and as the result of it he received grievous injuries. Immediately, after the accident, himself, and the rider of the motor cycle were shifted to a nearby hospital for treatment, and that the doctors who examined him found that he had sustained an open fracture on his right lower limb, and on upper part of tibia, and the same was amputated subsequently. Initially, the police of Puranapool registered a case in Cr.No.324 of 2008 for the offence under Section 337 IPC, against the driver of mini vehicle, later altered the Section of

law to 338 IPC and filed charge sheet against him. Since the claimant became disabled permanently on account of amputation of right leg below the knee, he laid claim for compensation against the owner and insurer of the mini vehicle bearing No.AP 9TA 0351.

4. Before the Tribunal, the 2nd respondent-ICICI Lamboard General Insurance Company Limited filed its counter denying the averments made by the appellant. The 1st respondent remained *ex parte*.

5. On behalf of the claimant, PWs.1 to 4 were examined and Exs.A1 to A13 were marked. No oral evidence was adduced on behalf of the 2nd respondent-Insurance company. Copy of the policy of crime vehicle was marked as Ex.B1.

6. The Tribunal, on appreciation of oral and documentary evidence, awarded compensation of Rs.4,65,400/-. Having not been satisfied with the quantum of compensation awarded by the Tribunal, the claimant filed the present appeal seeking enhancement of compensation.

7. It has been contended by the learned counsel for the appellant-claimant that the Tribunal ought to have awarded compensation of Rs.10,00,000/- as against the owner and insurer of the offending vehicle instead of Rs.4,65,400/-, and that the award of the lower court is wholly unfair. Though the right leg of the appellant is amputated, the Tribunal awarded a meager sum of Rs.30,000/- towards pain and suffering. It is his

further contention that the appellant cited a judgment of the Delhi High in *Oriental Insurance Co. Ltd vs. Satish Sharma*¹, where an amount of Rs.1,00,000/- was awarded towards pain and suffering as the injured had 60% of permanent disability. No reasoning is given by the trial Judge for not taking the said case law into consideration. The Tribunal awarded a sum of Rs.30,000/-, towards pain and suffering and it also has got no rationale. The pain and trauma which the injured is subjected, has not been properly appreciated by the court below. The trial Judge has failed to appreciate the fact that huge amounts are to be spent by the petitioner for purchase of artificial limb, and for fixation of the same, he has to undergo surgery. As the amount of Rs.1,10,000/- awarded by the Tribunal towards medical expenditure is not in consonance with the evidence on record, the petitioner seeks the indulgence of this Court.

It also has been argued by him that though the evidence on record speaks to the fact that claimant was admitted in Osmania General Hospital to take treatment, and was treated there as inpatient from 30.11.2008 to 16.1.2009, the Tribunal had not awarded any amount under the head of loss of income during the period of treatment. The learned trial Judge failed to appreciate that during the period of hospitalization and subsequent to his discharge from hospital, the appellant had taken assistance of an attendant, without whose assistance he was incapable for attending to his normal duties. It has been urged finally by him that as the compensation awarded is not

¹ 2008 ACJ 2259

just and reasonable in respect of fracture injury received by the claimant to his right lower limb, which is amputated below the knee due to which he has become disabled permanently, he has filed this appeal seeking to set aside the award of the court below and pass an appropriate order granting fair and reasonable compensation to him. He has placed reliance on the decisions rendered by the apex Court in *Nagappa v Gurudayal Singh and others*², *K.Narasimha Murthy v. Manager, Oriental Insurance Co. Ltd and another*³, *Raj Kumar v. Jeet Singh and others*⁴.

8. Learned counsel appearing for the 2nd respondent-insurance company would contend that the Tribunal had thoroughly appreciated the entire evidence on record and awarded reasonable compensation of Rs.4,65,400/-, and that there is no patent error in the award passed by the Tribunal.

9. I have gone through the entire evidence available in the case record.

Having not been satisfied with the quantum of compensation awarded by the Tribunal, the claimant preferred the present appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act').

10. It is evident from the contents of Ex.A4-injury certificate that the claimant in the accident that occurred on 29.11.2008, received open fracture to his right lower limb and upper part of

² AIR 2003 SC 674

³ 2004 ACJ 1109

⁴ 2015 ACJ 2323

tibia, the statements of the injured and the rider of the Hero Honda motorcycle were recorded by the police, it appeared from the evidence on record that the claimant was admitted in Osmania General Hospital and there he was treated as an inpatient from 30.11.2008 to 16.1.2009. The claimant examined PW3- the Professor of Orthopedics in Osmania General Hospital. He deposed that PW1 was admitted in the Osmania General Hospital on 30.11.2008 and was discharged on 16.1.2009; for correction of fracture injury he received to his right lower limb external fixation was arranged by conducting a surgery, and he was advised to come for follow up treatment on 4.4.2009, PW1 was again admitted in Osmania General Hospital to take treatment for infected fractures of both bones of right leg and by conducting surgery which was inevitable, the right leg below the knee was amputated, and he was discharged from the hospital on 10.5.2009.

11. From the contents of Ex.A4 would certificate, and the evidence of P.W.3 it is quite clear that the petitioner received a fracture injury to his right leg and he took treatment for the said injury in Osmania General Hospital for more than 45 days initially, later for a period of one month. When he was admitted in Osmania General Hospital again to take treatment for the infected fracture of right leg, the same below the knee was amputated. Though this fact is borne by the record, the Tribunal without appreciating it in a proper perspective, awarded only a sum of Rs.30,000/- under the head of pain and

suffering. The pain and trauma which the claimant suffered is unimaginable, and it can not be compensated in terms of money. The Tribunal ought to have awarded just and reasonable compensation under the head of pain and suffering taking a note of aforementioned facts which are borne by record. As the amount of Rs.30,000/- awarded by the Tribunal under the head of pain and suffering appears to be minimal, the same is enhanced to Rs.75,000/- from Rs.30,000/-.

12. The Tribunal, on appreciation of the evidence of PW3-doctor and other medical record produced by the claimant, granted an amount of Rs.50,000/- in respect of grievous injury. As it is contended by the claimant that he has not awarded with reasonable and fair compensation under the head of medical expenditure, loss of earnings, the evidence of P.W.3 needs to be looked into to arrive to a just conclusion in this regard. It has been deposed by P.W.3 that he examined P.W.1 on 05.11.2009 and assessed the disability at 45% and the said disability is partial and permanent in nature. Ex.A8 is the disability certificate issued by him.

It has been deposed by P.W.1 that he was earning Rs.100/- per day by doing labour work and by the date of the accident he was 32 years old. The court below assessed the income of the petitioner roughly at Rs.100/- per day, taking note of the evidence given in this regard by him and assessed monthly loss of income due to disability of 45% is at Rs.1350/- and the annual loss of income at Rs.16,200/-. Multiplying the

annual loss of income with appropriate multiplier 17, it has assessed loss of income at Rs.2,27,000/-, as it has been deposed by P.W.3 in his evidence in categorical terms that the petitioner is suffering from disability of 45% due to amputation of the right leg below the knee.

The claimant has produced Ex.A9-medical bills and also Ex.A11-quotation to prove cost of artificial limb. Though it has been proved by the petitioner that a sum of Rs.2,62,600/- needs to be spent for purchase of artificial limb and he has to undergo surgery for getting the artificial limb fixed/arranged, only a sum of Rs.1,10,000/- is awarded under the head of medical and incidental expenditure. In *Nagappa's case* (referred to supra), the Apex Court has awarded Rs.1,00,000/- towards additional compensation to meet the periodical expenditure which the injured is expected to spend towards future medical expenditure to undergo surgery for periodical change of artificial limb etc.

13. As it is manifestly clear from the material available in the case record, that no specified amount of compensation is granted to the claimant for purchase of artificial limb, and towards the expenditure which he needs to incur to undergo surgery for its fixation and the periodical medical expenditure which is to be incurred by him for change of artificial limb for every two to three years etc., this Court is of the view that the amount of Rs.1,10,000/- awarded under the head of medical expenditure and other incidental expenditure, can be enhanced to Rs.3,00,000/- from Rs.1,10,000/-.

14. Having noticed from the award under challenge that no amount is granted under the head of extra nourishment, a sum of Rs.20,000/- is granted towards extra nourishment.

15. The evidence on record clinchingly establishes the fact that the claimant had received fracture injury to his right leg and had taken treatment initially for a period of 45 days and thereafter, for a period of one month, and during that period his leg was amputated. Though these facts were borne by record no amount is awarded under the head of transportation charges and attendant charges. Hence, this Court awards Rs.5000/- and Rs.10,000/- respectively under the aforementioned heads.

16. As no amount is awarded under the head of loss of earnings during the period of treatment, this court grants a sum of Rs.9,000/- under the said head.

17. As no amount is awarded under the head of loss of enjoyment of life due to amputation of right leg below the knee, Rs.1,00,000/- is awarded under the said head.

18. The appellant-claimant is thus, entitled to get total compensation of Rs.8,44,400/- and details of compensation which gets under various heads are as indicated below.

1.	Pain and suffering	Rs. 75,000/-
2.	Medical and incidental expenses	Rs. 3,00,000/-
3.	Extra nourishment	Rs. 20,000/-
4.	Attendant charges	Rs. 10,000/-

5.	Transportation charges	Rs. 5,000/-
6.	Loss of earnings	Rs. 9,000/-
7.	Loss of amenities in life	Rs. 1,00,000/-
8.	Loss of earning capacity	Rs. 2,75,400/-
9.	Grievous injury	Rs. 50,000/-
	Total	Rs. 8,44,400/-

19. In the light of my aforementioned discussion, the appeal is allowed in part awarding compensation of Rs.8,44,400/- (Rupees eight Lakhs forty four thousand four hundred only) as against Rs.4,65,400/-. The awarded compensation is payable to the claimant together with interest @ 7.5% per annum from the date of filing of the claim petition till the date of realization by the 1st and 2nd respondents jointly and severally. The appellant is at liberty to withdraw the compensation so deposited together with accrued interest without furnishing any security.

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

JUSTICE J. UMA DEVI

12.10.2018
rkk