

HONOURABLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

M.A.C.M.A. No.2830 of 2009

JUDGMENT:

This Appeal arises out of the Order and Decree dated:03.12.2008 in O.P. No.606 of 2005 on the file of the Chairman, Motor Accident Claims Tribunal-cum-I Additional District at Nalgonda.

2. The appellant is the petitioner-claimant, filed the above O.P. under Section 166 of the Motor Vehicles act, 1988, claiming compensation of Rs.2,50,000/- against the respondents 1 and 2, for the injuries sustained by him in a motor accident occurred on 08.7.2005. While he was going on his luna moped from Angadipeta to Chandur, when reached Gundrapally cross road, auto bearing No.AP-24-V-5946 dashed the luna moped of the petitioner and he sustained fractures. The respondents 1 and 2 have filed counters opposing the claim of the petitioner-claimant.

3. The Tribunal, on consideration of the evidence of witnesses PWs.1 and 2 and the documents Exs.A1 to A7, and Ex.B1 has awarded compensation of Rs.74,000/- with proportionate costs and interest at 7.5% per annum from the date of petition till realisation, holding the respondents 1 and 2 jointly and severally liable for payment of compensation.

4. Aggrieved by the quantum of compensation awarded by the Tribunal, the petitioner-claimant filed this appeal seeking enhancement of compensation.

Contd..P.2.

5. Heard the arguments of Sri P.S.P. Suresh Kumar, learned Counsel for appellant-claimant; and Sri P. Bhanu Prakash, learned Standing Counsel for the Insurance Company.

6. The point for consideration in this appeal is whether the appellant-claimant is entitled for enhancement of compensation?

7. The learned Counsel for the appellant submits that the quantum of compensation awarded by the Tribunal is inadequate. It is further submitted that the petitioner has suffered 40% disability and he produced medical certificate to prove his disability. He got examined PW.2-Dr. P. Sugnaneshwar, one of the Members of medical board, Nalgonda. In spite of the proof of disability, the Tribunal considered 40% disability, suffered by the petitioner-claimant. The finding of the Tribunal is that since the medical certificate was filed three years after the accident, the disability was not considered.

8. The grievance is that the testimony of PW.2 reveals that he was one of the Member of the medical board, constituted in the said hospital at Nalgonda, and the medical board has assessed the disability of appellant and issued disability certificate-Ex.A5. The findings of the Tribunal are that the injuries mentioned in the disability certificate are not corresponding the injuries spoken by the appellant. A perusal of the medical certificate-Ex.A5 reveals that the injuries suffered by the petitioner are only reflected in the disability certificate Ex.A5. In fact, the disability certificate was issued three years after the accident. There is no material on record to show that the injuries mentioned in Ex.A5 are not the injuries suffered by the petitioner.

The injuries suffered by appellant are grave in nature which are three fractures. Even after three years, two fractures are not healed, and he is still suffering disability because of these injuries. The Tribunal has lost sight of fact that and rejected the evidence of medical officer with regard to issuance of disability certificate. As a matter of fact, the medical certificate was issued by the medical board, Nalgonda and one of the members of the medical board was examined as PW.2. The other finding of the Tribunal that PW.2 has not given any reasons for assessment of the disability of 40%, need not be taken into consideration in view of the issue of disability certificate by the medical board.

9. It is quite unnecessary for the Court to go into the assessment of the disability by the medical board. The purpose of the constitution of the medical board was to assess disability basing on the norms fixed by the medical board. There is no dispute raised by the respondents that the disability was not assessed by the medical board properly. As there is no contention raised by the respondents, the medical certificate issued by the medical board could not have been disbelieved by the Tribunal. Therefore, the finding of the Tribunal in this regard is set aside since it is proved that the petitioner-claimant has suffered 40% disability and he is entitled for the compensation.

10. The other contention raised by the learned Counsel for the appellant that the appellant is a Goldsmith and earning an amount of Rs.6,000/- per month is concerned there is no material on record to prove the income of injured. The Tribunal has however taken notional income of Rs.3,000/- towards his salary.

11. In view of the fact that the injured was walking prior to the accident, the notional income assessed by the Tribunal at Rs.3000/- does not require any interference.

12. This Court is of the considered opinion that the appellant is entitled for compensation towards disability of 40% suffered by him. The annual notional income of Rs.3,000/- is applied to 40% disability. the appellant is entitled for compensation towards disability of 40% (as Rs.14,400/- which comes to total Rs.3,000x12x40%x13) comes to Rs.1,87,200/-. The rest of the award of the Tribunal shall remain the same.

13. The appellant's Counsel submits that the Tribunal has awarded only Rs.9,000/- towards loss of earnings, Rs.5,000/- towards medicines and Rs.60,000/- towards three fractures required to be enhanced. Keeping in view the nature of injuries and the treatment undergone by the petitioner-claimant, in the light of the evidence available on record, I do not see any reason to interfere with the compensation awarded by the Tribunal except on some heads enhanced as shown in the following Tabular form:

| S.No. | Head                                        | Compensation awarded by the Tribunal | Compensation confirmed |
|-------|---------------------------------------------|--------------------------------------|------------------------|
| 1.    | Towards three fractures                     | Rs.60,000/-                          | Rs.60,000/-            |
| 2.    | Transport, medicines, and extra nourishment | Rs.5,000/-                           | Rs.5,000/-             |
| 3.    | Loss of earnings for three months           | Rs.9,000/-                           | -Rs.9,000/-            |
| 4.    | Towards disability                          | -                                    |                        |
|       |                                             | Rs.74,000/-                          | Rs.1,87,200/-          |
|       | Total                                       |                                      | Rs.2,61,200/-          |

Thus, the Tribunal awarded Rs.60,000/- towards fractures, Rs.5,000/- towards transport, medicines and extra nourishment and Rs.9,000/- towards loss of earnings which comes to total

Rs.74,000/-. This Court enhanced compensation towards disability of 40% which comes to Rs.14,400/-.

Thus, in total  $\text{Rs.}3,000 \times 12 \times 40\% = 14,400 \times 13 = 1,87,200$  Plus  
 $9000 + 5000 + 60,000 = \text{Rs.}2,61,200/-$ .

14. In the result, the appeal is allowed modifying the award passed by the Tribunal in O.P. No.606 of 2005, dated:03.12.2008 by enhancing the compensation from Rs.74,000/- to Rs.2,61,200/- with proportionate costs and interest @ 7.5% from the date of petition till the date of realization.

The appellant is directed to pay the Court fee on the excess amount over and above his claim.

The respondents 1 and 2 are directed to deposit the enhanced amount in any nationalized bank, within one month from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the same.

Pending Miscellaneous Petition/s, if any, shall stand closed.

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GUDISEVA SHYAM PRASAD, J

Dated:26-7-2018

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HONOURABLE SRI JUSTICE GUDI SEVA SHYAM PRASAD



M.A.C.M.A. No.2830 of 2009

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