

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A No. 3512 of 2009

JUDGMENT:

This appeal arises out of the Judgment dated 15.07.2003 in Original Petition No.674 of 2002 on the file of Chairman, Motor Vehicle Accident Claims Tribunal-cum-III Additional District Judge, at Karimnagar. The appellant is the petitioner who filed a claim petition under Section 166 of the Motor Vehicles Act for compensation of 1 lakh on account of the injuries sustained by her in a motor vehicle accident.

2. The brief facts of the case of the petitioner are that on 23.06.2002 while the petitioner was going along with his relatives in an auto bearing member AP-15V-3873 for Chinthakunta to offer prayers at Goddess Yellamma temple, and when the auto reached the outskirts of the village at 2 PM, one tractor trailer bearing No.AP-15U-4712/4713 driven by the respondent No.1 in a rash and negligent manner at a high speed came in opposite direction and dashed the auto of the petitioner, resulting in the injuries to the petitioner. The petitioner was shifted to Government Hospital Karimnagar. She sustained abrasion over right eyelid, fracture of shaft of the femur right side and other injuries. The petitioner has undergone two operations on her right leg. She has undergone an operation for inserting steel rods and in future she is required to

undergo another operation for removal of the steel rods. The police Karimnagar registered a case in Crime No.143 of 2002 for the offence punishable under Sections 337 and 338 IPC against respondent No.1. The petitioner was a labourer earning 3000 per month and due to the injuries sustained by her in the accident she could not attend to her coolie work and as the accident occurred due to the rash and negligent driving of respondent No.1, the petitioner has claimed compensation of 1 lakh on account of the injuries suffered by her and its consequences. She made a claim against respondent Nos.1 to 3 the driver, owner and insurer of the crime vehicle.

3. The respondents 1 and 2 filed counter denying the allegations made in the petition and contended that the accident did not take place due to rash and negligent driving of the driver of respondent No.1. Respondent No. 1 was having valid driving license and the vehicle also was insured with respondent No.3 and, therefore, it is pleaded that if the compensation is payable the respondent No.3 insurer may be liable to pay the compensation as the vehicle was insured with him. The respondent No.3 filed counter denying the allegations in the petition contending that the accident did not take place due to rash and negligent driving of respondent No.1. It is pleaded that respondent No.1 was not having valid driving license and that the petitioner has not sustained injuries in the said accident and she has not taken any treatment as claimed by her and therefore sought for dismissal of the petition.

4. The Tribunal, on consideration of the evidence of the witnesses, PW.1 and the documents Exs.A-1 to A5, and Ex.B1-copy of insurance policy, has awarded compensation of 33,000 as against the claim of the petitioner of 1 lakh, with interest at 9% per annum from the date of petition till realization. Aggrieved by the impugned judgment, the petitioner had filed this present appeal for enhancement of compensation.

5. Heard the arguments of the learned counsel for respondent insurance company. There is no representation on behalf of the appellants though sufficient opportunity has been given to them for advancing arguments in this matter.

6. The main contention of the learned counsel for respondent is that the appellants have not examined the medical officer to prove the medical expenditure and, therefore, the trial Court has properly appreciated the evidence on record in this matter and passed the award and the same does not require any interference, as the award is just and reasonable.

7. At the outset, the main question that fall for consideration in this appeal is whether the appellants are entitled for enhancement of compensation on the ground that the Tribunal has not granted the just and reasonable compensation. The judgment of the Tribunal reveals that reliance was placed on the testimony of PW.1-the

injured eyewitness and on the documents Ex.A1-the First Information Report and Ex-A2-copy of charge sheet and Ex-A3 and Ex-A4-medical certificate issued by Hospital authorities and Ex-A5-medical bills 8 in number. The Tribunal, on consideration of the evidence, awarded compensation of 33,000.

8. It is pertinent to note that the medical officer has not been examined in this case to prove the nature of injuries suffered by the petitioner. However, the medical certificate is filed to prove the injuries. Ex.A4 is the medical certificate relied on by the trial court in awarding the compensation. In para 10 of the impugned judgment, the trial Court has stated that Ex.A4 reveals that the petitioner sustained an aberration of right eyelid which is certified to be simple in nature. She sustained a fracture of shaft of femur right side which is certified to be grievous in nature and she had undergone operation as per the document Ex.A5-the medical bills of eight in number. The trial court having come to a conclusion that the petitioner suffered one simple injury and one grievous injury and the grievous injury was a fracture to the shaft of femur right side and she had also undergone treatment for the said injury, has awarded compensation of 23,000 for the injuries and 10,000 towards medical expenditure. The Tribunal has lost sight of the loss of earnings at least for a period of one month and extra nourishment and attendant care and treatment and transport charges, therefore, on these counts the appellant is entitled for 20,000 towards extra

nourishment, attendant charges and loss of earnings. No doubt there is evidence on record to show that she had undergone an operation and, therefore, she is not entitled for future medical expenditure. Therefore, the compensation awarded by the tribunal 33,000 is enhanced to 53,000 with proportionate costs and interest at 9% per annum from the date of petition till realization.

9. In **V. Sudha v. P. Ganapathi Bhat**¹, the Hon' ble Supreme Court held in paragraph 14 as under:

"14. In the present case, the claim petition filed by the appellant claimed an amount of Rs.3,50,000/-, the Tribunal awarded Rs.1,94,350/- which was enhanced by the High Court to Rs.2,65,000/-. The evidence of the doctor tendered in the Tribunal on 3.12.2008 stated that the future treatment would cost more than Rs.90,000/-. This corroborating evidence has not been contravened. The High Court however awarded only an amount of Rs.15,000/- towards future medical expenses. In view of the dicta in Raj Kumar Vs. Ajay Kumar (supra) we accept the corroborative evidence given by the doctor, and add the amount as reflected in the doctor's evidence. A similar view has been taken by a Bench of this Court recently in Civil Appeal No. 5945 of 2012 Kavita Vs. Deepak, decided on 22.8.2012 to which one of us (G.S. Singhvi J) was party. This would add the remaining amount of Rs.75,000/- to the compensation awarded by the High Court which takes it to a figure of Rs.3,40,000/-. Since, the doctor has said that the expenses could be more than Rs.90,000/- but has not specified how much would be that amount, we add the remaining amount of Rs.10,000/- to make it Rs.3,50,000/- and thus fully allow the claim of the appellant. The amount of Rs.85,000/- thus added, with interest at 8% from the date of the petition (as originally awarded) will give her an added amount in the range of Rs. 1,25,000/-. That will meet her requirement as placed before the MACT in her claim petition in its entirety."

¹ (2013) 7 SCC 400

10. In the above judgment, the petitioner has suffered two grievous injuries and he underwent operation. Therefore, the future medical expenditure was awarded; whereas in the instant case the petitioner has received one simple injury and one grievous injury. There is no evidence to prove that he underwent surgery. The medical officer has not been examined to prove that fact or any documents filed in support of his contention that he underwent operation and, therefore, the Tribunal however awarded Rs.33,000/- which may not be adequate compensation and, therefore, it has to be enhanced to grant just and reasonable compensation.

11. On consideration of the material in this case, in view of the foregoing reasons, the compensation awarded by the tribunal Rs.33,000/- is enhanced to Rs.53,000/-. As far as the rate of interest awarded by the tribunal in this case is concerned, it is 9% per annum; whereas in the above judgment, the Hon' ble Supreme Court has granted interest rate 8% per annum. It is pertinent to note that the insurer contended that the rate of interest awarded by the tribunal is excessive, in the light of the above judgment, the rate of interest is reduced from 9% to 8% from the date of petition till realization. Though this is an appeal filed by the claimant, since the compensation awarded to the claimant should be just and reasonable, when the compensation is being enhanced, though the respondent insurance has not filed any appeal challenging the quantum of compensation awarded by the tribunal, in the facts and

circumstance of the present case the rate of interest awarded by the tribunal at 9% per annum, can be reduced to 8% per annum, which is just and reasonable interest and as per the decisions referred above.

12. **IN THE RESULT**, the appeal is partly allowed enhancing the compensation from Rs.33,000/- to Rs.53,000/- with proportionate costs and interest at the rate of 8% per annum, from the date of petition till realization. The respondents are directed to deposit the amount within one month from the date of receipt of copy of this order. On such deposit, the appellant is permitted to withdraw the entire amount.

28th September, 2018

KSM

GUDISEVA SHYAM PRASAD, J

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD



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