

HONOURABLE MS. JUSTICE J. UMA DEVI

MACMA.NO: 359 OF 2010

J U D G M E N T :

Aggrieved by the award passed in O.P.No.126 of 2008 on the file of the Court of V-Additional Metropolitan Sessions Judge [Mahila Court]-cum-XIX-Additional Chief Judge, City Criminal Courts, Hyderabad, granting compensation of Rs.75,300/- to the claimant in the afore-mentioned O.P., by partly allowing his claim made for compensation of Rs.2,00,000/-in respect of fracture dislocation of left elbow and injury to left thigh, knee and leg which grossly affected his source of livelihood, he came before this Court seeking enhancement of compensation by preferring the present appeal.

2. For the sake of convenience, the parties hereinafter would be referred to as they are arrayed in O.P.No. 126 of 2008.

3. The facts of the case as narrated in the claim-statement are briefly stated as under :

That on 10-07-2006 at about 09:00 a.m., while the petitioner was proceeding from Chaderghat to Golnaka, when he reached Chaderghat bridge an R.T.C. bus bearing No. AP-11-Z-3009 came in his opposite direction in a rash and negligent manner and dashed him and as a result of it, he fell down

and sustained dislocated fracture injury to left elbow, injury to left thigh, knee and leg. Immediately after the accident, he was taken to Osmania General Hospital, Hyderabad and there skin grafting was done to his left fractured leg. After he was discharged from Osmania General Hospital, he took treatment in a private Ayurvedic Hospital. He was operated on 09-5-2007 and intra-nailing was done to his left hand. He incurred more than Rs.20,000/- towards treatment and hospitalization charges. He was working as “chapel maker” on contract basis prior to his involvement in the accident and was earning Rs.8000/- to Rs.9000/- per month. On account of fracture injury received to his left elbow, he could not able to attend to the work of “chapel making”, which was his source of livelihood and he became incapable of attending to any work due to the said fracture injury. Therefore, he laid the claim as against the APSRTC for compensation of Rs.2,00,000/-.

4. In the counter-affidavit filed by the respondent they denied the manner of the accident narrated in the claim petition. The respondents asserted that the accident occurred due to own negligence of the petitioner himself. It was also contended by the respondent that the petitioner without establishing that the accident dated 10/7/2006 occurred due to negligent

driving of RTC bus bearing No. AP-11-Z-3009 by its driver and the nature of injuries received by him and that he lost his source of livelihood due to the injuries he received in the accident dated 10/7/2006 cannot get compensation from them. Based on the afore-mentioned pleadings, the court below framed the following points for consideration:

i) whether the accident resulting in injuries to the petitioner occurred owing to the rash and negligent driving of the driver of APSRTC bus bearing No.AP-11-Z-3009 ?

ii) whether the petitioner is entitled for compensation, and, if so, to what amount and from whom ? and

iii) To what relief?

5. The Tribunal, on appreciation of evidence of PWs.1 to 3 and Exs.A-1 to A-7 thought that it is appropriate to award compensation of Rs.75,300/-.

6. Having not been satisfied with the compensation so awarded, the claimant in O.P.No.126 of 2008 came before this Court seeking to enhance the compensation.

7. I have perused the award impugned in this appeal so also the evidence available in the case record.

8. The grievance of the claimant is that he has not been adequately compensated in respect of fracture injury received to his left hand due to which he lost his source of livelihood. He contends that despite the

examination of Dr.Dutta, who treated him in Osmania General Hospital, Hyderabad and applied P.O.P., and conducted surgery after his admission in the same hospital, again granted meagre compensation of Rs.75,300/- though it was crystal clear from the evidence on record that he suffered from post-trauma fracture of left elbow and the same was mentioned in Ex.A-7 disability certificate issued by the medical board. It is also contended by the claimant that no compensation amount is awarded to him under the head of pain and suffering.

9. The testimony of PW-3 Dr.Dutta, would indicate that the petitioner was admitted in Osmania General Hospital on 10-7-2007 with de-gloving injury to left thigh and montage of fracture dislocation of left forearm ; skin grafting was done to injury No.(i) on the date when the claimant was admitted in hospital and P.O.P. was applied for injury No. (ii). As per PW-3, the claimant left the hospital against the medical advice and was re-admitted on 09-5-2007 for obtaining treatment to non-united fracture of left forearm and obtained treatment in their hospital upto 18-5-2007 as an inpatient. As per PW-3 movements of left elbow of the petitioner were restricted and that

he cannot do hard work with that hand and that he is having disability of 10%.

10. It is manifestly clear from the award under challenge that though the evidence on record clinchingly establishes the fact that soon after the accident, the petitioner was admitted to Osmania General Hospital for treatment and there skin grafting was done for the injury received to left thigh and P.O.P. was applied for the fracture injury to left hand and thereafter he was admitted again in the same hospital and surgery was conducted for fixing nail in fractured left hand, the court below not awarded any amount, towards compensation under the head of transportation charges, attendant charges, extra-nourishment. Therefore, I feel it appropriate to award Rs.10,000/-, Rs.2,000/- and Rs.5,000/- under the afore-mentioned heads.

11. The claimant examined Md.Pervaiz as PW-2 in whose shop he was working on contract basis as “chappal maker” to prove his occupation and earning. As per his testimony, the claimant worked as “chappal maker” on contract basis in his shop from 2000 and that he used to pay him Rs.20/- per making each chappal pair; on average he was making 20 pairs of chappal in a day and used to Rs.8000/- to Rs.9000/- per month. It appears that as no

document was produced by PW-2 to prove that he was running a footwear shop, the court below disbelieved his testimony in respect of the earnings of the claimant. However, taking into consideration the evidence of claimant and PW-2 which was not refuted/disproved as to the avocation of the petitioner as a “chappal maker”, the court below assessed the income of the petitioner roughly at Rs.100/- per day, since the evidence of the petitioner and PW-2 was clear and categoric on this aspect, the court below ought to have assessed the daily income of the petitioner at Rs.150/- per day instead of Rs.100/- per day.

12. PW-3 in clear terms deposed that the movements of left elbow of the petitioner are restricted and that he cannot do hard work and he is having the disability of 10%. With the above disability the petitioner can not only attend to the work of “chappal making” but also to his routine work, as the movements of left hand are restricted. As such, disability is a n impediment for him to attend to the work of “chapel making” , the loss of earning capacity is assessed at Rs.450/- per month and for the year at Rs.5,400/-. If the annual loss of income of Rs.5,400/- is multiplied by’18’ [as the petitioner was aged about 28 years by the date of accident], the amount which he gets towards

compensation under the head of loss of earnings comes to Rs.97,200/-

[Rs.5,400/- x 18 = Rs.97,200/-]. As the bunch of medical bills, Exs.A-6 shows

that a sum of Rs.10,500/- is incurred by the petitioner towards purchase of

medicines, the Tribunal awarded Rs.10,500/- towards medical expenditure.

13. It is not in dispute that the claimant was aged about 28 years by the date of accident, he may be aged about 35 to 40 years at present. Due to restricted movements of left elbow joint, he cannot do hard work with that hand [as per the evidence of PW-3]. Taking note of the inability of the petitioner to do hard work due to restricted movement of left elbow joint and the inconvenience which has been caused in leading normal life, I feel it appropriate to award Rs.50,000/- under the head of loss of enjoyment in life.

The petitioner is thus entitled to get the compensation amount of more than Rs.2,00,000/- regarding which he has laid the claim against the APSRTC under whose management and control the driver of the offending bus was working at the relevant point of time.

14. There is no dispute in so far as receiving of two fracture injuries by the petitioner. The wound certificate Ex.A7 and the testimony of PW-3 establish that the petitioner was admitted in Osmania General Hospital,

Hyderabad on 10-7-2007 with de-gloving injury and montage fracture and dislocation of left forearm, skin grafting was done for injury No.(i) on the day when he was admitted in the hospital and P.O.P. was applied for injury No. (ii), later a surgery was conducted for fixation of intra-nailing when he was admitted again in Osmania General Hospital on 09-5-2007 to obtain treatment to left forearm fracture which was not united. The learned trial Judge taking into consideration the afore-mentioned nature of injuries received by the claimant and the pain and trauma he was subjected due to receiving of such injuries awarded Rs.25,000/- towards pain and suffering. As the amount of Rs.25,000/- awarded to the petitioner under the head of pain and suffering appears to be reasonable, the same has not been revised or modified.

15. The particulars of the amount which the petitioner is entitled to get under various heads is as follows :

i) compensation under head of pain & suffering	..	Rs. 25,000-00
ii) extra-nourishment	..	Rs. 10,000-00
iii) transportation charges	..	Rs. 3,000-00
iv) attendant charges	..	Rs. 5,000-00
v) medical expenditure	..	Rs. 10,500-00
vi) loss of enjoyment in life	..	Rs. 50,000-00
vii) loss of future income	..	Rs. 97,200-00
Total	..	Rs.2,0,700-00

16. In the light of my afore-mentioned discussion, the amount which the petitioner is entitled to get towards compensation under various heads is Rs.2,00,700/-, and the same is hereby restricted to Rs.2,00,000/- regarding which the claim is laid by him as against the APSRTC.

17. In view of the above, there cannot be any hesitation for me to hold that the amount of Rs.2,00,000/- claimed by the petitioner towards compensation is fair and reasonable. Therefore, the compensation is enhanced to Rs.2,00,000/- from Rs.75,300/-. The enhanced compensation is payable to the petitioner by the management of APSRTC together with proportionate costs and interest @ 7.5% p.a., from the date of filing of the claim-petition till the date of realization.

18. In the result, the appeal is allowed as indicated above.

19. As a sequel, miscellaneous applications if any, shall stand disposed of.

JUSTICE J. UMA DEVI

01-08-2018

I s L

NB: Furnish CC tomorrow very urgently
as the judgment was retyped many a times.

B/o. I s L

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[R E S U L T : A P P E A L I S A L L O W E D]



Circulation No: 2 4 2

Date 01-08-2018

Court Master: I s L