

THE HON'BLE MS. JUSTICE J. UMA DEVI

MACMA NO. 1881 of 2010

JUDGMENT:

The award dated 30.6.2009 passed in M.V.O.P.No. 282 of 2005 by the VII-Addl. District Judge-cum-Chairman, Motor Accidents Claims Tribunal, Kakinada is assailed in the present appeal by the claimant in the aforementioned OP on the main ground that the compensation amount of Rs.45,000/- awarded to him in respect of the injuries received by him and the damage to his auto is not fair and reasonable.

The facts which led to filing of the present appeal are briefly stated as under,

The auto bearing No. AP 5 Y 4079 belonging to the appellant was engaged by some persons to take them to Salipalli from Samalkot on 23.7.2004. While the appellant was taking them in his auto to Salipalli, a quarry lorry bearing No. AP 5 Y 6446 driven by the 1st respondent came in high speed and in a rash and negligent manner and dashed the auto. In the aforementioned accident, the appellant and other inmates of the auto received injuries and the auto belonging to the appellant was damaged completely. Immediately after the accident the appellant and other injured were taken to Government General Hospital, Kakinada for treatment. Police of Gollaprolu registered a case in Cr.No. 50 of 2004 under Sections 304-A, 337 and 338 IPC against the driving of the offending quarry lorry. The appellant further contended that in the aforementioned accident he received grievous injury to his left leg and that he took treatment for the said injury for a period of one month and

that he could not be able to attend to any work during the period of hospitalization. It was further contended by the appellant that despite the availability of the documentary evidence in proof of incurring a sum of Rs.3,707/- towards medical expenditure, the Tribunal has not awarded a single pie towards compensation under the head of medical expenditure taking into consideration of the evidence given by P.W.2 that treatment was provided to him on free of costs. It was also the contention of the appellant that no amount was awarded to him towards attendant charges and extra nourishment. The third other contention of the appellant was that the amount of Rs.15,000/- awarded to him in respect of the fracture injury received to his left leg is very low and meagre and that the amount of Rs.10,000/- awarded in respect of four simple injuries received by him in the aforementioned accident is also not fair and reasonable. The fourth other contention of the appellant was that the amount of Rs.10,000/- awarded to him by the Tribunal in respect of the damage caused to the auto is also not fair and reasonable.

The learned standing counsel appearing for the insurance company, while answering to the aforementioned contentions of the appellant, stated that the Tribunal, on appreciation of the evidence on record, awarded compensation of Rs.45,000/- and that the amount so awarded is fair and reasonable.

I have gone through the award impugned in the present appeal. It is understood from the contentions urged by both sides that the dispute raised in the present appeal is only regarding the quantum of compensation. The respondent-insurance company has not adduced any

evidence, disputing the evidence given by the appellant regarding the manner of the accident, except the production of Ex.B1-copy of insurance policy relating to the offending vehicle. The Tribunal has rightly found that the accident, in which the appellant received injuries, occurred due to the negligent driving of the quarry lorry bearing No. AP 5 Y 6446 by its driver relying on the evidence of P.W.2 whose evidence is corroborated by the documentary evidence placed on record by the appellant.

So far as the finding recorded by the Tribunal in respect of quantum of compensation is concerned, it is evident from the evidence given by P.W.2-Dr. B. Syam Sundar that the appellant was admitted in the Government General Hospital, Kakinada on 24.7.2004 at about 4.53 A.M. with the following injuries,

- 1) Swelling and deformity of left thigh;
- 2) A laceration of 3 x ½ cm on the left eye brow, bleeding present;
- 3) Multiple laceration of ½ x ½ cm skin-deep on the right shoulder and right arm, and bleeding;
- 4) A lacerated injury of 3 x ½ cm skin deep over left shoulder, bleeding present;
- 5) Multiple abrasions of 3 x 2 cm over the chest, red in colour;

It is clear from the evidence given by P.W.2 that the appellant received fracture injury to his left femur for which he underwent surgery and was discharged on 28.8.2004. Though it is evident from Ex.A3 – a bunch of medical bills that a sum of Rs.3,707/- was incurred by the appellant towards medical expenditure, the Tribunal has not awarded any amount under the head of medical expenditure.

Upon consideration of the evidence given by the appellant and the bunch of medical bills produced by him, it is felt that awarding a sum of Rs.3,700/- under the head of medical expenditure is just and reasonable.

Since it is evident from the material on record that the appellant sustained fracture injury to his left femur for which he underwent surgery and was discharged on 28.8.2004, I feel it appropriate to award a sum of Rs.50,000/- towards pain and suffering in respect of the fracture injury the appellant received to his left femur which is grievous in nature as against the amount of Rs.15,000/- awarded by the Tribunal under this head. Taking into consideration of the nature of other injuries which are simple injuries, I feel it appropriate to award a sum of Rs.20,000/- as against Rs.10,000/-.

It is evident from the material on record that the appellant was in the hospital for a period of one month. Since he received fracture injury to his left femur, without the assistance of an attendant, he could not have attended to any of his personal works whilst his stay in hospital and thereafter. Considering the aforementioned aspect, I feel it appropriate to award an amount of Rs.3,000/- under the head of attendant charges. Since no amount is awarded by the Tribunal under the head of extra nourishment, I feel it appropriate to award a sum of Rs.3,300/- under the head of extra nourishment.

As it appears from the award of the Tribunal that a sum of Rs.10,000/- is awarded under the head of loss of earnings upon consideration of the period of hospitalization of the appellant etc., this Court does not want to intervene so far as the amount awarded under the

said head. Similarly the indulgence of this Court is not needed in my view in so far as the amount awarded by the Tribunal under the head of damage to the auto, as it appears from the award of the Tribunal that a sum of Rs.10,000/- is awarded by the Tribunal taking into consideration of the contents of the First Information Report –Ex.A1 wherein it is recited clearly that the auto is damaged in the aforementioned accident.

In all the appellant is entitled to get a compensation of Rs.1,00,000/- as against Rs.45,000/- awarded by the Tribunal.

In the light of my discussion as aforementioned, the appeal is partly allowed enhancing the compensation from Rs.45,000/- to Rs.1,00,000/- (Rupees One Lakh only) with interest @ 7.5% per annum from the date of filing of the claim petition till the date of realization and the same is payable by the respondents 2 and 3 jointly and severally. After deposit of the enhanced compensation amount, the appellant is entitled to withdraw the same at once.

Miscellaneous applications, if any pending, shall stand closed.
There shall be no order as to costs.

JUSTICE J. UMA DEVI

Dt.14.6.2018
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