

THE HON'BLE MS.JUSTICE J.UMA DEVI

M.A.C.M.A.NO.1921 OF 2010

JUDGMENT:

Against the order, dated 30.09.2010 passed in M.V.O.P.No.808 of 2009 by the Chairman, Motor Accident Claims Tribunal-cum-XIV Additional Chief Judge, (FTC), Hyderabad (for brevity 'the Tribunal'), the present appeal is filed by Sri M.Satyanarayana, the claimant in the above mentioned O.P.

2. The main grievance of the appellant-claimant is that the compensation awarded to him in respect of fracture injury received to his right upper arm is wholly unreasonable. The Court below failed to appreciate the evidence on record which established the fact that movements of right hand are restricted totally. It is also contended by the appellant that he was doing fitter work in companies prior to the accident and was getting income of Rs.10,000/- per month and was contributing his entire income for maintenance of his family, which was solely depending on his earning. Because of fracture injury received to his right hand, he is not in a position to attend to the work of fitter and, he is put to untold agony, and that he is not in a position to attend to his normal duties also without the help of others. As he became incapable of attending to the work of fitter, which he was doing earlier, he lost his source of his livelihood, and that he is not in a position to maintain his family members, who were solely depending on his earnings.

3. The facts which led the petitioner to file the present appeal are precisely stated as under:

That on 03.11.2008 while the petitioner was proceeding towards Shamshabad from Mehdiapatnam in a DCM van bearing No. AP 122 T 5205, a TATA Star Bus bearing No.AP 10 BDT T/R 3310 which was coming in the same direction behind the van, gave a hit to the van on its back and also to a Hero Honda motor cycle bearing No.CBZ AP 09X 2177, which was proceeding ahead of DCM van and as the result of it, petitioner and rider of Hero Honda motor cycle sustained injuries. Immediately after the accident, the petitioner and another injured were taken to Osmania General Hospital in an Ambulance and there, the petitioner was admitted as an inpatient. On intimation to the Police of Langer House, case in Cr.No.419 of 2008 was registered against the driver of the TATA Star Bus. The petitioner spent huge amounts towards medicines and treatment. Though he was provided with better treatment for the injury to his right hand, his right hand not regained its normal position. Due to the fracture injury, he received to his right hand, the movements of it are restricted. The petitioner's further contention was that as the driver of TATA Star Bus was responsible for receiving of fracture injuries to him in the accident, dated 03.11.2008, he laid claim against the owner and insurer of TATA Star Bus bearing No.AP 10 BDT T/R 3310 and requested the Court below to pass a decree in his favour by awarding reasonable compensation to him. But, the Court below awarded meagre compensation of Rs.2,00,000/-. As the compensation awarded is not fair and reasonable, he has filed the present appeal seeking the indulgence of this Court.

4. Counsel for the respondent while answering to the aforementioned contentions of the appellant stated that the appellant-claimant laid the claim for Rs.2,00,000/-. The

Court below awarded compensation of Rs.2,00,000/- on appreciation of evidence given by P.Ws. 2 and 3. Though compensation amount of Rs.2,00,000/- was awarded as claimed by the appellant, he came before this Court by preferring the appeal. The amount awarded by the Court below to the appellant-claimant is fair and reasonable. There appears no patent irregularity in the order under challenge and the same needs no interference.

5. I have perused the award passed in MVOP No.808 of 2009, which is impugned in the present appeal by the appellant-claimant. I have also gone through the oral and documentary evidence available in the case record.

6. The learned trial Judge on appreciation of evidence given by the petitioner himself and the documents viz., Exs.A1 to A3 came to the opinion that the accident, dated 03.11.2008, which resulted fracture injury to right upper arm of the petitioner and other injuries on the left upper arm, was caused due to negligent driving of TATA Star Bus bearing No.AP 10 BDT T/R 3310 by its driver.

7. When the matter was being argued, no contention as raised by the respondent that the Tribunal erred in observing that the driver of TATA Star Bus bearing No.AP 10 BDT T/R 3310 is responsible for the occurrence of the accident.

8. As arguments are advanced questioning computation of compensation, I feel it appropriate to confine the discuss only on the question 'whether reasonable compensation is awarded to the claimant in respect of fracture injury which is said to be received by him in the road accident, dated 03.11.2008'?

9. The claimant has examined Dr.B.Shankar and Dr.Ramesh, under whose care and supervision, he took treatment. P.W.2-Dr.B.Shankar is another doctor, who attended the claimant when he was taken to Osmania General Hospital soon after the accident for the purpose of treatment. It is evident from the contents of Ex.A2 that the appellant sustained an abrasion over the face, laceration of 5 x 4 x 1 over right upper arm and abrasion over left upper arm. On verification upon X ray film, P.W.2 noticed fracture to right hand and in his opinion, the said injury was grievous in nature. It is deposed by P.W.3 that the appellant has taken treatment to his right hand in his hospital, the movements of it are restricted. In his opinion, the appellant is having the disability of 60% and such disability is partial in nature.

10. P.W.3 is the consultant surgeon of Punjala Nursing Home, where the petitioner took treatment for the fractured right upper arm. He deposes that the appellant was admitted in their hospital on 15.11.2008 with fracture around right elbow and he was operated for the said injury on 17.11.2008 and was discharged on 22.11.2008. He too opined that the above mentioned injuries were grievous in nature. On examination of the appellant, P.W.3 came to the opinion that he is suffering from the disability of 40%. It is evident from the oral testimony of P.Ws. 2 and 3 that movements of right hand of the appellant are restricted and that he cannot carry weights etc., The Court below on thorough appreciation of evidence given by P.Ws. 2 and 3 and the other material documents such as discharge summary card and bunch of medical bills, has awarded compensation of Rs.33,000/- under the head of medical expenditure and extra nourishment.

11. The Court below assessing the income of the appellant at Rs.3,000/- per month though came to the opinion that he is entitled to get Rs.2,16,000/- towards loss of earnings, it awarded compensation of Rs.2,00,000/- as the petitioner laid the claim for compensation of Rs.2,00,000/-.

12. As the compensation so awarded is contrary to the quantification of compensation made by the Court below, I thought that it is a fit case where indulgence can be showed.

13. It is evident from the award under challenge that no amount is awarded under the head of loss of past earnings. Similarly, no amount is awarded towards attendant charges, transportation charges and loss of enjoyment in life etc.

14. The petitioner is entitled to get compensation of Rs.2,16,000/- under the head of loss of earnings, which has been assessed reasonably by the Court below taking into consideration of the evidence medical expert, P.W.3 that the petitioner is having disability of 40%, which certainly will have its own effect on his earning capacity.

15. It is not in dispute is that the appellant has received fracture injury to the right upper arm. The pain and trauma, which he is subjected, on account of such injury is unimaginable and that the same cannot be compensated in terms of money. The Court below has awarded only a sum of Rs.2,000/- under the head of pain and suffering in respect of fracture injury received by the appellant to his right hand. The compensation so awarded appears to be unfair. Having come to the conclusion that the amount awarded to the

appellant under the head of pain and suffering in respect of fracture injury received by him to his right hand is not fair and reasonable, I feel it appropriate to enhance it to Rs.40,000/- as against Rs.2,000/-. The Court below has awarded Rs.6,000/- in respect of two simple injuries received by the appellant and the same in my view cannot be interfered with.

16. As no reasonable compensation is awarded under the head of transportation charges, I feel it appropriate to award a sum of Rs.5,000/- as against Rs.1,000/- under the head of transportation charges.

17. It is also evident from the award of the Court below that it has not awarded any amount under the head of attendant charges. There is evidence on record to say that appellant has taken treatment in a private Nursing Home as an inpatient, for which P.W.3 is a consultant surgeon. As the petitioner could not able to attend to his normal duties during period of treatment and thereafter without taking assistance of any body, certainly same should have helped him in attending to his normal duties. Taking into consideration of the said fact that the Court below ought to have awarded reasonable amount under the head of attendant charges. As no amount is awarded under the head of attendant charges, I feel it appropriate to award a sum of Rs.6,000/- under the head of attendant charges.

18. It is clear from the material on record particularly from the evidence of P.W.3 that the appellant was advised to take bed rest for a period of three months and was advised to do physiotherapy. But the Court below has not adverted its attention to the aforementioned aspect. Since, no amount has been awarded to the appellant under the head

of past earnings, I feel it appropriate to award a sum of Rs.9,000/- under the head of loss of past earnings.

19. The appellant has produced the medical bills amounting to Rs.32,685/-. Though this fact is evident from Ex.A5-bunch of medical bills, the Court below has awarded a total sum of Rs.33,000/- towards medical expenditure and extra nourishment without awarding any amount separately under the head of extra nourishment. Therefore, I feel that there is need to award considerable amount under the head of extra nourishment. As it is felt that it is appropriate to award a sum of Rs.10,000/- under the head of extra nourishment, this Court hereby awards Rs.10,000/-under the head of extra nourishment. As it is evident from the testimony of P.Ws.2 and 3 that the movements of right hand of the petitioner are restricted, he may not in a position to attend to his normal works as usual. Taking into consideration of his difficulty and inability to attend to normal duties as usual due to restricted movements of right hand, I feel it appropriate to award Rs.25,000/- under the head of loss of enjoyment in life.

20. The learned trial Judge even after coming to the opinion that the petitioner is entitled to get more than Rs.2,00,000/- towards compensation under the head of loss of earnings, it has awarded compensation of Rs.2,00,000/-, as the petitioner has laid the claim for such amount. A duty is cast upon it to assess compensation taking into consideration of all the mitigating circumstances.

21. That a Larger bench of this Court in **ADAM INDUR MUTTEMMMA AND OTHERS V RATHOD REDDIA AND OTHERS** ¹, while answering the question whether the Tribunal can award

¹ 2015 (4) ALD 585 (L.B.)

compensation under Motor Vehicles Act over and above the claim made by the claimant, subject to payment of Court fee etc., which was referred for its consideration, observed as follows:

“Thereafter, the very same question fell for consideration of the Supreme Court in *Nagappa v Gurudayal Singh and others*, 2003 (1) ALD 1 (SC) = (2003) 2 SCC 274 and the question was answered in the affirmative holding that in the Motor Vehicles Act, 1988, there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In appropriate case, where from the evidence brought on record, if the Tribunal/Court considers that the claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. The only embargo is it should be just compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence. Such observations were made in the light of the provisions contained in Sections 166 (1) and (4); 158 (6) and 168 of the Motor Vehicles Act, 1988. This view was thereafter reiterated by the Supreme Court in *Rajesh and others v Rajbir Singh and others*, (2013) 9 SCC 54; *Sanjay Verma v Haryana Roadways*, (2014) 3 SCC 210 and *Jitendra Khimshankar Trivedi and others v Kasam Daud Kumbhar and others*, I 2015 (3) ALD 141 (SC) = (2015) 4 SCC 237.

Thus, in view of the law laid down by the Supreme Court in the aforementioned judgments, the question referred to the Larger Bench must be answered in the affirmative. Order accordingly. The law declared by the Division Bench in *Chintnala's* case (supra), accordingly stands overruled.”

22. The learned trial Judge though has come to the opinion that the appellant is entitled to get more compensation than the amount claimed by him, it has restricted his claim only to Rs.2,00,000/-, as he laid the claim against the owner and insurer of the offending vehicle for such amount. The said view of Court below, in my view, is not correct and it is against the law laid down in *Adam Indur Muttemma's* case.

23. In the light of my above held discussion, the claimant is entitled to get compensation as mentioned below.

Loss of future earnings	Rs.2,16,000/-
Pain and suffering	Rs. 40,000/-
Simple injuries	Rs. 6,000/-
Transportation charge	Rs. 5,000/-
Attendant charges	Rs. 6,000/-
Past earnings	Rs. 9,000/-
Medical expenses	Rs. 33,000/-
Extra nourishment	Rs. 10,000/-
Loss of amenities	Rs. 25,000/-

Total	Rs 3,50,000/-

24. The appellant-claimant is hereby entitled to get a sum of Rs.3,50,000/- as compensation as against Rs.2,00,000/-

25. The appeal is thus answered in favour of the appellant enhancing the compensation amount from Rs.2,00,000/- to Rs.3,50,000/-, and the same to be paid to him by the respondents 1 and 2 jointly and severally together with interest at 7.5% per annum from the date of filing of the petition till the date of realization. The appellant-claimant is directed to pay deficit Court fee on the enhanced compensation amount.

26. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

J.UMA DEVI, J

DATED: 10-07-2018.

Hsd