

HONOURABLE MS JUSTICE J.UMA DEVI**M.A.C.M.A.No.504 of 2010****JUDGMENT :**

Aggrieved by the award passed by the Chairman (MACT)-Cum-II-Additional District & Sessions Judge, Nizamabad (in short 'the court below'), granting compensation of Rs.55,000/- in O.P.No.510 of 2000, the claimant in the O.P. preferred this appeal under Section 173 of Motor Vehicles Act, 1988.

2. The appellant herein is the petitioner in O.P.No.510 of 2000, Respondents Nos.1 & 2, herein, are the owner and insurer of the car bearing No. AP-25-T-2373, which involved in accident dated 21.01.1999.

3. For the sake of convenience, the parties will hereinafter be referred as they are assigned before the court below.

4. The facts in brief are, that on 21.01.1999 at about 10.30 P.M., while the petitioner was proceeding on a motor cycle bearing registration No.AP-25-E-4555 from Nizamabad, when he reached near a Petrol bunk, situated at Madhavnagar Sivar, a Car bearing No. AP-25-T-2373 came with a high speed in rash and negligent manner and dashed the motor cycle of the petitioner, due to which the petitioner fell down and received grievous injuries. In the afore mentioned accident the petitioner received severe head injury, clavicular fracture on left side and fracture injury to right tibia. Immediately, after the accident, he was taken to Government Headquarters Hospital, Nizamabad from there he was referred to Gandhi Hospital, Secunderabad and after his discharge from the said hospital, he was admitted in Yashoda Super

Specialty Hospital, Malakpet, Hyderabad for better treatment and there he took treatment as inpatient from 22.01.1999 to 10.02.1999. While taking treatment in Yashoda Hospital at Malakpet, he underwent surgeries for correction of right tibia bone. He incurred expenditure of Rs.1,00,000/- towards medicines, surgical charges and other incidental expenditure. It was also asserted by the petitioner that he was doing business prior to the accident, and was also attending to the work of cultivation. As he became incapable of attending to any work, due to fracture injuries he received in the accident, he lost the source of livelihood. Therefore, he laid the claim for a compensation of Rs.4,00,000/- as against the owner and insurer of the Car bearing No. AP-25-T 2373.

5. The owner of the offending car did not choose to contest the case. The National Insurance Company Limited with whom the crime vehicle was having valid and subsisting insurance policy alone contested the case. The Insurance Company, though took several pleas, did not choose to establish them. No oral or documentary evidence was adduced by the Insurance Company.

6. During the course of trial, the petitioner examined himself as PW 1 and got marked Exs.A1 to A19 to substantiate his claim. On behalf of the respondent No.2 no oral evidence was adduced and no documents were marked. As it was an evident from the testimony of the PW-1 that the driver of the car bearing No. AP 25 T 2372 caused accident to him by driving the car in negligent manner, the Court below recorded the finding that the rash and negligent driving of the car belonging to R1 by its driver was not main cause for the occurrence of the accident, and such accident resulted grievous injuries to the petitioner and

awarded a total compensation of Rs.55,000/- to him and made the respondents No.1 and 2 liable to pay such compensation jointly and severally together with interest and costs.

7. One of the grounds urged by the petitioner is that Ex.A11- Medical bills which establish incurring of expenditure of Rs.58,317/- towards medicines has not been appreciated by the Court below and that the fact which has been established by him that the nature of injury he received to right tibia, clavicular bone on left side will have their own effect on his earning capacity, has not been appreciated in a proper perspective. Due to non appreciation of afore mentioned aspects miscarriage of justice is occasioned and the same needs to be cured by this Court by re-appreciating the evidence on record.

8. Heard the counsel for the petitioner and learned standing counsel appearing for the Insurance Company.

9. Perused the order under challenge and evidence on record. Verified Ex.A3 – O.P. ticket issued by the Government Hospital, Nizamabad. Perused Ex.A.8 and Ex.A.9 - the discharge summaries dated 22.01.1999 and 19.05.1999 issued by Yashoda Hospital, Malakpet. The petitioner has produced 58 medical bills and the out patient Card issued by the Yashoda Hospital.

10. The pain and trauma, which the petitioner is put to suffer on account of fracture injury he received to right tibia and left clavicular bone injury, though cannot be compensated in terms of money reasonable sum might have been awarded by the Court below under the head of pain & suffering. As the amount of Rs.30,000/- awarded under head of pain and suffering appears to be low, the same is enhanced to Rs.40,000/-. As regards to the compensation awarded in

respect of simple injuries there appears to be reasonable, hence the same has not been revised or modified.

11. It is crystal clear from Exs.A8 and A9 – discharge summaries of different dates that the petitioner was admitted twice in Yashoda Hospital, Malakpet, Hyderabad. Even after it has been established by the petitioner through Ex.A.8 and A.9 that he was compelled to get himself admitted in a hospital to take treatment for the fracture injuries received in the accident again and again and substantial amounts were spent towards medicines, treatment etc. Only a sum of Rs.3,000/- was awarded under the Head of Medical Expenditure. As it is opined that the amount of Rs.3,000/- awarded by the Court below under head of medical expenditure and treatment appears to be unfair the same is enhanced to Rs.40,000/-.

12. As the amount of Rs.3,000/- awarded to the petitioner under the head of attendant charges appears to be reasonable the same has not been modified or revised. But the compensation under the Head of extra nourishment is enhanced to Rs.5,000/- from Rs.3,000/- as same appears to be low. The compensation amount awarded under the Head of Transportation charges has not been revised. As the amount of Rs.10,000 awarded under the Head of expenditure incurred towards hospital bills appears to be reasonable and same has not been revised.

13. In the light of my afore held discussion, it is made clear that the compensation awarded by the Court below under some of the heads such as compensation under the head of pain and suffering, medical expenditure, extra nourishment alone are revised. The particulars of

compensation which he has entitled to get under different heads are as follows:

Sl.No.	Particulars	Amount Rs.
1.	Compensation under the head of hospital charges	10,000-00
2.	Compensation under the head of pain and suffering	40,000-00
3.	Compensation for simple injuries	3,000-00
4.	Compensation under the head of medical expenditure	40,000-00
5.	Compensation under the head of attendant charges	3,000-00
6.	Compensation under the head of extra nourishment	5,000-00
7.	Compensation under the head of transport charges	3,000-00
	Total compensation after enhancement (Rupees one lakh and four thousand only)	1,04,000-00

Thus the petitioner is entitled to get compensation of Rs.1,04,000/- as against Rs.55,000/-.

14. The appeal is allowed accordingly in part in the light of partial modification of the award of the Court below. In view of partial modification of the award of the Court below the appellant gets compensation of Rs.1,04,000/-. The enhanced compensation amount carries interest @ 7.5 %. Respondent 1 and 2 have to pay the enhancement compensation to the petitioner together with interest @ 7.5% per annum from the date of filing of the petition till realization.

Consequently, miscellaneous petitions pending, if any, in this appeal shall stand closed. No costs.

JUSTICE J. UMA DEVI

Dated: 14.08.2018

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HONOURABLE MS JUSTICE J.UMA DEVI

M.A.C.M.A.No.504 of 2010



Date 14. 09.2018

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