

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MA.CMA.NO.718 OF 2010

JUDGMENT

Not being satisfied with the compensation granted by the Motor Accidents Claims Tribunal – cum – IV Additional District Judge, II F.T.C., at Nalgonda in O.P.No.541 of 2004 dated 17-10-2006, the claimant / injured, filed the present appeal seeking enhancement.

The claimant being minor at the time of accident, was represented by her father in the claim petition. In the claim petition it is stated that on 6.7.2004, while the claimant was returning to her maternal grandmother's house in an auto bearing NO. AP 24V 2785, after closure of school at Thurkapally village, as a paid passenger, the driver of the auto drove it in a rash and negligent manner without observing the front motor cycle and dashed, and as a result, the auto rolled down towards left and due to which, the claimant sustained fractures to both her legs.

The Police, Thurkapally Police Station, registered the case against the driver of the auto in Cr.No. 33 of 2004 under Sections 337 and 338 IPC.

Immediately after the accident, the claimant was shifted to Bhongir Hospital and from there, she was shifted to Gandhi Hospital, Secunderabad and there operation was done on left femur and plating was done and other operations were also performed on the fractured portion of the body for setting the bones, skin grafting and bone grafting were also done in the hospital. The further case of the claimant is that she requires prolonged treatment, and as her father is a labourer, is unable to meet the expenditure.

With these averments, the claim petition has been filed under Section 166 of the Motor Vehicles, Act, 1988, claiming compensation of Rs.1,00,000/-.

The insured and insurer of the crime vehicle filed counter affidavits and denied the manner of the accident pleaded by the claimant, place and time of accident, involvement of the crime vehicle, injuries sustained by the claimant and further contending that the compensation claimed is excessive, sought for dismissal of the claim petition.

The Tribunal, considering the evidence of the claimant, who was examined as P.W.2 and Exs.A-1 and A-8, which are copies of FIR and charge sheet, categorically held that the accident occurred due to rash and negligent driving of the driver of the auto bearing No. AP 24 U 2785 and in the said accident, the claimant sustained injuries.

The Tribunal awarded Rs.35,000/- towards grievous injuries and for pain and suffering; Rs.2,500/- for simple injury; Rs.6,000/- towards medical expenses, attendance, transportation and extra nourishment; Rs.5,000/- towards loss of expectation of life, loss of pleasure and amenities and loss of academic period; and thus in all awarded compensation of Rs.48,500/- with interest at the rate of 8 per cent per annum from the date of the petition, till date of the award and thereafter at the rate of 6 per cent per annum till the date of deposit of the amount.

The present appeal is filed by the claimant, seeking enhancement of compensation.

Learned counsel appearing for the appellant / claimant submits that the claimant was studying 9th class at the time of accident and due to accident, she sustained grievous injuries to her both legs and rods were fixed in her both thighs and she is unable to walk properly and is limping and she is unable to squat and answer calls of nature as usually, because of the fractures sustained to her legs. He further submits that the claimant has got marked Exs.A-4 to A-7 medical record to prove the injuries sustained by her. He further submits that because of the accident, the claimant has to discontinue her studies and is facing severe hardship and mental agony, but the Tribunal without considering the evidence on record, granted meagre amount of compensation of Rs.48,500/-, as against the claim of Rs.1,00,000/-, therefore, he sought to enhance the compensation.

Sri N.Mohan Krishna, learned Standing Counsel, appearing for 2nd respondent – insurance company submits that the claimant has not produced any evidence to show that she sustained permanent disability and that she discontinued her studies permanently. Therefore, the Tribunal, appreciating the entire evidence, has granted just compensation and the same may not be interfered with by this court.

From the material on record, it could be seen that the claimant is studying 9th class at the time of accident and she was examined as P.W.3. The case of the claimant, as per the evidence lead by her, is that iron rods were fixed in both her thighs and for removing the same, she has to undergo another operation, and because of the accident, she stopped her studies at the relevant time and further she is unable to squat and walk and answer to calls of nature as usually, and she cannot walk properly and is limping and

because of fractures, is facing much hardship and mental agony. Her case is that chances of her marriage have become bleak.

The father and mother of the claimant were examined as P.Ws.1 and 3. They got marked the medical evidence as Exs.A-4 to A-7. As per Ex.A-6, medical certificate, the claimant sustained fracture of lower shaft of the left femur bone, fracture of upper shaft of the right femur bone, fracture of lower end of right radius and ulna and one simple injury, which is laceration over right ankle (muscle deep). Further as per Ex.A-2 discharge card issued by Gandhi Hospital, Secunderabad, the claimant took treatment as inpatient with I.P.No.18912 from 6.7.2004 to 29.07.2004.

The insured and the insurer have not lead any evidence, either oral or documentary, to rebut the evidence of the claimant.

In these circumstances, in my considered view, the compensation awarded by the Tribunal, is inadequate and warrants enhancement.

Accordingly, the compensation granted by the Tribunal for grievous injury and for pain and suffering is enhanced from Rs.35,000/- to Rs.70,000/-; for simply injury, the amount of Rs.2,500/-, is enhanced to Rs.5,000/-; the amount awarded under the head of medical expenses, attendant charges, transportation and extra nourishment is enhanced from Rs.6,000/- to Rs.10,000/-; and the amount granted under the head of loss of expectation of life, loss of pleasure and amenities and loss of academic period, is enhanced from Rs.5,000/- to Rs.15,000/-. Thus, in all, the claimant is granted an amount of Rs.1,00,000/- (Rupees one lakh only), with

interest at the rate of 7.5 per cent per annum from the date of the claim petition, till date of realization.

On deposit of the amount, the claimant, who has become major, is permitted to withdraw the same.

The appeal is accordingly allowed.

Miscellaneous petitions pending, if any, shall stand closed. No costs.

A.RAJASHEKER REDDY,J

DATE:20—02—2019

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