

THE HON'BLE SRI JUSTICE K. LAKSHMAN

M.A.C.M.A. No.2458 OF 2006

JUDGMENT:

Assailing the award and decree dated 23.05.2006 in M.A.T.O.P. No.1360 of 1998 passed by the Motor Accidents Claims Tribunal - cum - III - Additional District Judge (Fast Track Court), Khammam (for short 'the Tribunal'), appellant filed the present appeal.

2. Vide the aforesaid award, the Tribunal has awarded an amount of Rs.37,200/- towards compensation with proportionate costs and interest at 7.5% per annum thereon from the date of petition till the date of realization against respondent Nos.1 to 3 jointly and severally as against the claim of Rs.1,00,000/- (Rupees one lakh only) made by the appellant for the injuries he sustained in a road accident occurred on 08.02.1997.

3. Heard Ms. T. Neelima Reddy, learned counsel representing Mr. A. Surya Narayana, learned counsel for the appellant - petitioner and Mr. S. Agastya Sharma, learned counsel for respondent No.3 - Insurer.

4. It is relevant to note, the appeal against respondent No.2, owner of the vehicle, was dismissed for default by this Court as per order dated 05.07.2016. Despite service of notice on respondent No.1, driver of the vehicle, none appeared on his behalf.

5. According to the appellant, on 08.02.1997 himself, his parents and others were engaged as *coolies* on the Tractor-Trailer bearing

registration Nos.ATO 6155 and 6150 to load and unload the sand and gravel and while they were proceedings on the said vehicle and when reached the outskirts of Tekulagudem Thanda, since its driver, respondent No.1 drove the said vehicle in a rash and negligent manner at high speed, lost the control over the vehicle. On account of the same, the vehicle met with an accident. The appellant sustained grievous and simple injuries. He took the treatment in Government Hospital, Mahaboobabad. Thereafter he was referred to M.G.M. Hospital, Warangal, where he got operated and two-steel rods were inserted and undergone treatment for a period of three months as inpatient. According to him, prior to accident he was hale and healthy and earning an amount of Rs.60/- per day by doing coolie work. Because of injuries he sustained in the accident, he sustained loss of future earning capacity, besides mental agony and pain. Therefore, he laid a claim seeking a sum of Rs.1,00,000./- as compensation against respondent Nos.1 to 3, driver, owner and insurer of the above vehicle, jointly and severally.

6. Though respondent Nos.1 and 2, driver and insured, made their appearance before the Tribunal, did not choose to file the counter.

7. Respondent No.3 - Insurer only filed its counter disputing the liability as well as quantum of compensation.

8. On consideration of entire evidence, both oral and documentary, the Tribunal gave a finding that the accident was due to

rash and negligent driving of the driver of the above tractor and trailer. It is relevant to note that respondent No.3 - Insurer has not filed any appeal challenging the above said findings and the said finding attained finality. In view of the same, the only question that falls for consideration by this Court in the present appeal is as to whether the Tribunal has erred in awarding only Rs.37,200/- towards compensation as against the claim of Rs.1,00,000/- made by the petitioner.

9. It is the specific contention of the learned counsel for the appellant that due to the accident, the appellant sustained grievous injuries and in proof of the same, he filed Ex.A3 - wound certificate. According to him, the appellant has also examined PW.2, the doctor who treated him. As per Ex.A3 - wound certificate, the appellant sustained two injuries viz., a contusion on the right leg, which is simple in nature and the other was, fracture of both bones of right leg in middle which was grievous in nature. The appellant also relied on Ex.A4 - certificate issued by a private doctor, Khammam, according to which the doctor has examined the appellant and after taking X-ray it is confirmed that the appellant sustained fracture to right femur and it was treated by insertion of rod and the said rod has to be removed which involves expenditure. The appellant has also filed Ex.A5 - X-ray film taken on 17.11.2005. The appellant also filed Ex.A6 - attested copy of prescription dated 09.02.1997 and Ex.A7 - attested copy of referred letter dated 09.02.1997 and Ex.A8 - attested copy of

letter sent by C.M.O., MGM Hospital, Warangal, dated 09.02.1997. By referring the said documents, the learned counsel for the appellant would contend that the appellant was referred to M.G.M. Hospital, Warangal on 09.02.1997 by Civil Surgeon, Government Hospital, Mahaboobabad, and the appellant sustained an injury to his right shaft femur with suspected fracture. In Ex.A8, it is mentioned that sutured wound on right parietal in a length of 8 cm., punctured wound on right groin and swelling on right thigh. The Tribunal on consideration of the entire evidence held that the appellant failed to produce necessary material, such as X-ray with report etc. and, therefore, granted an amount of Rs.37,200/- as compensation as against the amount of Rs.1,00,000/- claimed by the appellant.

10. According to the learned counsel for the appellant, the Tribunal failed to consider the evidence of PW.2 - Medical Officer and the nature of injuries sustained by the appellant, thus, the Tribunal erred in awarding the said compensation.

11. Perusal of the entire record, more particularly, Ex.A3 - wound certificate, Ex.A4 - certificate issued by the Doctor, Ex.A5 - X-ray film, Ex.A6 - medical prescription, Ex.A7 - referred letter and Ex.A8 - letter, would show that the appellant sustained grievous injuries. He has sustained fracture to right femur and to rectify it, steel rod was inserted by conducting a surgery and the rod has to be removed. In support of the same, the learned counsel for the appellant would refer the deposition of PW.2, and on perusal of the same, PW.2

has stated that there is limping and it was permanent and that steel rod has to be removed by conducting another surgery. The learned counsel for the appellant has also relied upon other certificates including the referred letter under which the appellant was referred to M.G.M. Hospital, Warangal. But, the Tribunal without considering the said nature of injuries and deposition of PW.2, awarded an amount of Rs.37,200/- on the ground that injuries 1 and 2 mentioned in Ex.A8 were not found in Ex.A3 and that the appellant sustained only one simple injury and one grievous injury. With the said findings, the Tribunal awarded the said amount towards compensation.

12. The learned counsel would further contend that the Tribunal has not considered loss of monthly earnings and according to him, the appellant was attending coolie works and used to earn an amount of Rs.60/- per day. But, the Tribunal considered the monthly earning capacity of the appellant as Rs.1300/- on the ground that the appellant did not produce any evidence in proof thereof and did not examine his colleague in support of his contention. The said finding of the Tribunal is erroneous for the simple reason that admittedly the appellant was a coolie at the time of accident and according to him, he used to earn Rs.60/- per day. The accident took place on 08.02.1997. The Tribunal by considering the fact that the M.V. Act is a beneficial legislation and benefit should be given to the claimant whose benefit the Act was enacted. Therefore, the monthly income of the appellant should be considered as Rs.1800/- per month @ Rs.60/- per day instead of Rs.1300/- taken by the Tribunal.

13. Admittedly, the appellant sustained fracture to right femur, rod was inserted and that there was limping which is permanent and that the rod has to be removed by conducting another surgery. The said facts are evident from the deposition of PW.2 and Ex.A5 - X-ray film and Exs.A7 and A8 - referred letters. The Tribunal erroneously awarded an amount of Rs.37,200/- towards compensation which according to this Court is not reasonable. Therefore, an amount of Rs.25,000/- is awarded as compensation for fracture of right femur, Rs.10,000/- is awarded for simple injury. That apart, the appellant is also entitled for certain amounts towards loss of earnings as he must have taken bed rest for healing the injuries and it took at least four months. Therefore, an amount of Rs.7,200/- is awarded towards loss of earnings for a period of four (04) months @ Rs.1800/- per month. A sum of Rs.5,000/- is awarded towards transportation charges and also a sum of Rs.10,000/- towards extra nourishment. It is borne out on record that steel rod was inserted and as per the evidence of PW.2, the rod has to be removed by conducting a surgery for which certain amount is required. Therefore, a sum of Rs.15,000/- is awarded towards surgery for removal of rod. An amount of Rs.1000/- is awarded towards damage to clothing. Thus, in all the appellant is entitled to Rs.73,200/- as compensation as against the amount of Rs.37,200/- awarded by the Tribunal, under the following heads.

i) Fracture Injury	.. Rs. 25,000-00
ii) Simple Injury	.. Rs. 10,000-00
iii) Extra nourishment	.. Rs. 10,000-00
iv) Transportation	.. Rs. 5,000-00
v) Loss of earnings	.. Rs. 7,200-00

vi) Surgery for removal of steel rod	.. Rs. 15,000-00
vii) Damages to clothing	.. Rs. 1,000-00

Total	.. Rs. 73,200-00

14. The Tribunal awarded the interest at the rate of 7.5% per annum and the same is maintained on the amount awarded by the Tribunal as well as on the enhanced amount.

15. In the result, the appeal filed by the Appellant is allowed in part. Accordingly, the judgment and decree dated 23.05.2006 in M.A.T.O.P. No.1360 of 1998 passed by the Tribunal are modified enhancing the compensation to Rs.73,200/- (Rupees seventy three thousand and two hundred only) from Rs.37,200/- (Rupees thirty seven thousand and two hundred only) with interest at the rate of 7.5% per annum from the date of petition till realization. Respondent No.3 - Insurer is directed to deposit the above said amount with interest and costs after deducting the amount, if any, deposited earlier within one month from the date of receipt of certified copy of this judgment. There shall be no order as to costs.

As a sequel, Miscellaneous Applications, if any, pending in the appeal shall stand closed.

K. LAKSHMAN, J

12th February, 2020
Mgr