

THE HON'BLE SRI JUSTICE K. LAKSHMAN

M.A.C.M.A. No.1807 OF 2006

JUDGMENT:

Assailing the Award and decree dated 17.04.2006 in O.P. No.1238 of 2003 passed by the V Additional Metropolitan Sessions Judge - cum - XIX Additional Chief Judge, City Criminal Courts, Hyderabad (for short 'the Tribunal'), appellant filed the present appeal.

2. Vide the aforesaid award, the Tribunal has awarded an amount of Rs.70,000/- towards compensation with proportionate costs and interest at 7% 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.2,00,000/- (Rupees two lakhs only) made by the appellant for the injuries he sustained in a road accident occurred on 12.03.2003.

3. Heard Mr. C. Buchi Reddy, learned counsel for the appellant - petitioner. Despite service of notices on respondent Nos.1 and 2, none appeared. There was no representation on behalf of respondent No.3 and since the matter is of the year, 2006, the same is being disposed of this Court on perusing the record.

4. According to the appellant, on 12.03.2003 he was proceeding in Jeep bearing registration No. AP 22U 3755 from Shadnagar to Jadcherla along with some others and when it reached near Rajapur

outskirts at about 12.00 noon, since driver of the jeep drove it in a rash and negligent manner at high speed, it turned turtle by jumping over the culvert. On account of the same, the petitioner sustained grievous injuries all over his body including fractures. He was working as Supervisor in G.T.N. Textiles Limited, Guntlapotlapally, Balanagar Mandal and earning an amount of Rs.2,800/- per month. Due to the said accident, he sustained permanent disability and loss of earning capacity. Therefore, he filed the claim petition seeking an amount of Rs.2,00,000/- as compensation against respondent Nos.1 to 3, driver, owner and insurer of the said jeep.

5. Respondent Nos.1 and 2 - driver and Insured remained *ex parte* before the Tribunal.

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

7. On consideration of entire evidence, both oral and documentary, the Tribunal gave a finding that the accident had occurred due to rash and negligent driving of the driver of the jeep. Accordingly, the Tribunal awarded an amount of Rs.70,000/- as compensation to the appellant. 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.

8. In view of the above, the only question that falls for consideration by this Court in the present appeal with regard to quantum of compensation.

9. In order to prove monthly earning capacity, the appellant filed Ex.A11 - salary certificate issued by G.T.N. Textiles Limited. As per Ex.A11, the appellant used to earn an amount of Rs.2,800/- per month as salary. He has also filed Ex.A3 - discharge summary, Ex.A4 - original outpatient card, Ex.A5 - original Ultrasonography report, Ex.A6 - X-ray and its report, Ex.A7 and A9 - original bio-chemistry along with reports issued by different Hospitals, Ex.A9 - original prescription issued by the Hyderabad Nursing Home and Ex.A10 - original out-patient card issued by the Osmania General Hospital. It is not in dispute that the appellant did not examine the doctor who treated him. However, he has filed the above documents. According to him, he has received grievous injuries viz., fracture of right superior and inferior pubic rami, laceration on the right leg about 7 x 3 cms., fracture of pelvic and other multiple injuries all over his body. The Tribunal did not consider the documents filed and exhibited before it solely on the ground that the appellant did not examine the doctor to prove the same and to prove the amount spent towards medical expenses.

10. The Tribunal also did not consider Ex.A11 - salary certificate issued by G.T.N. Textiles on the ground that the appellant failed to

examine its employer. Thus, in all, the Tribunal granted only Rs.70,000/- as compensation.

11. As far as medical certificates and reports are concerned, the same were issued by the Government Hospital and Diagnostic Centre etc. Respondent No.3 - Insurer did not disprove the said documents by producing contra evidence and also during cross-examination of PW.1. More over, the said documents are public documents. Non-examination of doctor to prove the same is not fatal to the case of the appellant and the Tribunal ignored the very object of M.V. Act which is a beneficial legislation. It is also settled principle of law by the Apex Court as well as this Court that non-awarding of compensation on the ground of non-examination of doctor is not sustainable. The Tribunal has to award just compensation in the absence of disproving the documents filed by the appellant. In the present case also, the Tribunal failed to consider the said documents solely on the ground that the doctor who treated the appellant was not examined. The said finding of the Tribunal is erroneous.

12. It is not in dispute that the appellant has received multiple injuries in the manner stated above. He was treated as in-patient in Osmania General Hospital, Hyderabad from the date of accident i.e., 12.03.2003 to 19.03.2003 and he was treated by Dr. K. Anjaneyulu, Orthopaedic Surgeon, Osmania General Hospital, Hyderabad. After discharge also, the appellant was under treatment for the pelvic fracture etc., The amount of Rs.20,000/- awarded by the Tribunal

towards the said fracture is meager. The appellant received grievous injuries and he was under treatment in Osmania General Hospital for eight (08) days and thereafter also he had taken treatment for his pelvic fracture and kidneys etc. as could be seen from the documents exhibited before the Tribunal. Therefore, the appellant is entitled for an amount of Rs.25,000/- to each grievous injury i.e., fracture of right superior and inferior pubic ram, fracture of pelvic and laceration on the right leg, making a total of Rs.75,000/- and, accordingly the same is awarded. The appellant also suffered other injuries all over his body. Therefore, an amount of Rs.10,000/- is awarded under the said head. Another sum of Rs.20,000/- is awarded towards extra nourishment.

13. The learned counsel for the appellant relied on the decision in **Rajesh v. Rajbir Singh**¹ with regard to assessment of damages and grant of just and reasonable compensation. He also relied on a decision of the Apex court in **Govind Yadav v. New India Insurance Company**² regarding compensation, which includes not only expenses incurred for immediate treatment, but also expenses likely to be incurred for future medical treatment and pecuniary and non-pecuniary damages.

14. The Tribunal did not award any amounts towards loss of earnings. As already referred supra, the appellant was working as

¹. 2013 ACJ 1403

². (2011) 10 SCC 683

Supervisor in G.T.N. Textiles Limited on a monthly salary of Rs.2,800/-. In the said circumstances, an amount of Rs.11,200/- is awarded towards loss of earnings for a period of four (04) months @ Rs.2,800/-. The appellant had also taken treatment in private hospitals and must have spent some amount towards transportation. Therefore, an amount of Rs.5,000/- is awarded towards transport charges. Further, an amount of Rs.1,000/- is awarded towards damage to clothes. Thus, in all the appellant is entitled to Rs.1,22,200/- as compensation as against the amount of Rs.70,000/- awarded by the Tribunal, under the following heads.

i) Grievous Fractures	.. Rs. 75,000-00
ii) Simple injuries	.. Rs. 10,000-00
iii) Extra nourishment	.. Rs. 20,000-00
iv) Transportation	.. Rs. 5,000-00
v) Loss of earnings	.. Rs. 11,200-00
vi) Damages to clothing	.. Rs. 1,000-00

Total	.. Rs.1,22,200-00

15. As far as rate of interest is concerned, the Tribunal has awarded the interest at the rate of 7% per annum, but the same is on lower side in view of the principle held by the Apex court. Therefore, the same is enhanced to 7.5% per annum on the entire compensation amount.

16. In the result, the appeal filed by the Appellant is allowed in part. Accordingly, award and decree dated 17.04.2006 in O.P. No.1238 of 2003 passed by the Tribunal are modified enhancing the compensation to Rs.1,22,200/- (Rupees one lakhs twenty two

thousand and two hundred only) from Rs.70,000/-(Rupees seventy thousand only) with interest at the rate of 7.5% per annum thereon from the date of petition till realization. The 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.

12th February, 2020
Mgr

K. LAKSHMAN, J

