

THE HON'BLE SRI JUSTICE M. LAXMAN

CIVIL MISCELLANEOUS APPEAL No.4760 OF 2003

JUDGMENT:

1. The present appeal is directed against the order dated 31.01.2003 passed in O.P.No.649 of 1999 on the file of the Chairman, Motor Accident Claims Tribunal (II Additional District Judge), Nalgonda wherein and whereby the Tribunal has granted compensation of Rs.1,42,000/- with interest @ 9% per annum from the date of petition till date of realization.

2. Aggrieved by the said order, the present appeal is at the instance of the claimant. There is no dispute with regard to accident and injuries suffered by the claimant. The only grievance of the claimant/appellant is that the Tribunal without considering the principles of fixation of compensation relating to injuries, has meagerly fixed the amount without considering the impact of injuries.

3. The main grievance of the learned Counsel for the appellant/claimant is that the Tribunal has not followed the principles with regard to assessment of compensation in case of injuries. The amounts must be awarded under the pecuniary and non-pecuniary damages and they were not taken into consideration.

4. Heard arguments of both Learned Counsels.
5. As seen from the impugned Award, the Tribunal has granted Rs.80,000/- towards four fractures, Rs.10,000/- towards medical expenses, Rs.5,000/- towards pain and suffering, Rs.10,000/- towards loss of pay, Rs.2,000/- towards transport charge and Rs.25,000/- towards future operation, and Rs.10,000/- towards disability. Such fixation is not in accordance with the principles of assessment of compensation.
6. In the present case, the claimant suffered (1) fracture of neck left scapula (2) fracture of lateral malleolus right (3) fracture of medial malleolus right (4) fracture on the neck of left femur and blunt injuries on abdomen. He underwent surgery on 23.09.1998 and implants were fixed and still he has to undergo surgery for removal of implants, which surgery was not done when the Award was passed. The doctor assessed future expenses @ Rs.1,20,000/- and the physical disability of temporary nature assessed @ 40%. Ex.A3 to A10 support the injuries spoken by the doctor and the surgery done by the doctor at Hyderabad Nursing Home and they also support implants fixation.
7. The evidence also shows that the appellant/injured was a Government Teacher and his monthly salary was Rs.6,623/- and he was under treatment in the NIMS Hospital, Hyderabad Nursing Home for nearly one month. After discharge, if the nature of fixation is taken into

consideration, the healing period would be long. The appellant/claimant has not filed any evidence showing the number of days leave availed. Therefore, four months period is taken for calculation of temporary loss of earnings i.e. Rs.6,623/- x 4 = Rs.26,492/-.

8. Ex.A13 shows that the claimant incurred an expenditure of Rs.38,281/- and such medical expenses is very reasonable considering the nature of injuries and period of treatment in the two Hospitals. The Tribunal has not assigned any reason to fix less than the amount incurred specified under Ex.A13. Therefore, the claimant/appellant is entitled for Rs.38,281/- towards medical expenses.

9. The claimant moved from one Hospital to another Hospital and he must have incurred expenditure towards transportation, the Tribunal has granted only Rs.2,000/- which is very meagre. As such, this Court inclined to award a sum of Rs.10,000/- towards transportation charges and further a sum of Rs.10,000/- is awarded towards extra nourishment and attendant charges during the period of treatment.

10. In the present case the Tribunal has granted an amount of Rs.10,000/- towards disability, which is not in accordance with the principles of assessment of compensation. The injured was a Physical Teacher working in Government School and his services are not

terminated, as such, there is no future loss of earnings on account of disability. The granting of Rs.10,000/- is not correct.

11. The appellant/claimant requires further surgery for removal of implants. Admittedly, the injured was operated on 23.09.1998 and implants were fixed. The Tribunal has granted an amount of Rs.25,000/- towards future medical expenses, which is lesser side. This Court feels just and proper to grant a sum of Rs.35,000/- by considering previous expenditure incurred by the injured for surgery and treatment.

12. The Tribunal has granted a sum of Rs.5,000/- towards pain and suffering, which is highly unreasonable. The injured suffered multiple fracture injuries, apart from blunt injuries to the abdomen. All the above injuries if taken into consideration and the period of treatment and the healing period, this Court feels appropriate to fix at Rs.40,000/- towards pain and suffering. The petitioner suffered limping and he is a Physical Teacher by profession and his involvement in the physical activities is necessary. This limping would cause impact in discharging such activities. The implants are in the body and these would cause loss of amenities. Therefore, an amount of Rs.40,000/- is awarded under the loss of amenities. In all, the appellant/petitioner is awarded a sum of Rs.1,99,773/-, which is rounded off to Rs.2,00,000/-

13. In the result, the appeal is allowed in part granting compensation of Rs.2,00,000/- (Rs. Two lakh only) with proportionate costs and interest @ 7.5% per annum on the enhanced compensation from the date of petition till the date of deposit. The Insurance Company is directed to deposit the enhanced amount with interest within a period of two months from the date of receipt of copy of this order, on such deposit, the claimant is entitled to withdraw the entire amount. No order as to costs.

14. As a sequel, pending miscellaneous applications, if any, shall stand closed.

DATE: 01.07.2022
BDR

M. LAXMAN, J