

THE HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

MA.CMA.NO.1547 OF 2015

JUDGMENT

Not being satisfied with the compensation granted by the court of Motor Accidents Claims Tribunal – cum – IV Additional District Judge (FTC), Warangal in MVOP.No.969 of 2007, the claimant, who is the injured, filed the present appeal seeking enhancement.

2. The case of the claimant is that on 1.3.2005 he boarded the auto bearing No. AP 36 U 6908 to proceed from Ambedkhar Centre to Subedari, and when the auto reached near Housing Board Colony, Scooty Pep bearing No. AP 36 M 5471 was proceeding ahead in the same direction and when the auto tried to overtake the said scooty in a high speed and in a negligent manner, and unable to control the auto, the driver dashed the scooty from behind, as a result, the rider of the scooty fell down, and auto turned turtle as the driver applied sudden breaks, due to which, the claimant sustained injuries and he was immediately shifted to Mourya Hospital for treatment, and he was advised to take best rest for six months. One G.Krishnamurthy gave a complaint to Subedari Police, who registered it in Cr.No.93 of 2005.

3. The further case of the claimant is that due to the accident, he sustained (i) Bicondyle fracture of left tibia, (ii) fracture neck head of fibula left, (iii) compound fracture both bones right leg, (iv) injury on the left thigh, and he has taken treatment as in-patient for about ten days from 1.3.2005 to 10.03.2005. Therefore, he claimed compensation of Rs.15,000/- for extra-nourishment, Rs.15,000/- for pain and suffering and Rs.1,00,000/- for continuing disability. The case of the claimant is that he is working as driver, and earning an amount of Rs.4,000/- per month. For loss of

earnings, claimant claimed an amount of Rs.50,000/-. Thus, in all, claimant claimed an amount of Rs.1,80,000/-.

4. The respondent No.2, which is the insurer of the auto, filed counter affidavit and denying the averments made in the claim petition, sought for dismissal of the same.

5. The Tribunal considering the evidence of P.W.1, who is the injured, coupled with Exs.A-1 and A-3, which are certified copies of FIR and charge sheet, and as no rebuttal evidence was led on behalf of respondents, recorded finding of fact that the accident occurred due to rash and negligent driving of the driver of the auto and that the claimant sustained injuries in the said accident.

6. Considering the material on record, the Tribunal granted the following amounts:

1. Loss of earnings	-- Rs. 9,000 – 00
2. Extra nourishment	-- Rs.10,000 – 00
3. Pain and suffering	-- Rs.15,000 – 00
4. Loss of future earnings	-- Rs.40,000 – 00

Total:--	Rs.74,000 – 00

7. Seeking enhancement of compensation, the claimant filed the present appeal.

8. Heard Sri M.Ajay Kumar, learned counsel for the claimant and Sri N.S.Bhaskar Rao, learned counsel for the 2nd respondent – Insurance Company.

9. From the above material on record, it could be seen that due to the accident, the claimant sustained (1) Bicondyle fracture of left tibia, (ii) Fracture neck head of fibula left, (iii)Compound fracture both bones distal 1/4th of left leg, (iv) contusion on

the left thigh. The claimant apart from examining himself, also examined the doctor who treated him as P.W.2 and marked Ex.A-2 wound certificate. P.W.2 deposed that injuries 1 to 3 are grievous in nature, and fourth is simple in nature.

10. A perusal of the impugned order discloses that the Tribunal has not awarded any amount for the injuries. Hence, having regard to the nature of injuries, I am inclined to grant an amount of Rs.25,000/-, each to the three grievous injuries i.e., Rs.75,000/-, and Rs.5,000/- to the one simple injury. Thus, for the injuries, the claimant is entitled to Rs.80,000/-.

11. Having regard to the facts and circumstances, for pain and suffering, I am inclined to grant an amount of Rs.20,000/-, and Rs.15,000/- towards extra-nourishment, attendant charges and transportation charges. Thus the amount granted by the Tribunal under these heads is accordingly enhanced.

12. Though the claimant stated that he is a driver and earning an amount of Rs.4,000/-, failed to produce any tangible evidence. Therefore, the Tribunal, in my considered view, has rightly taken Rs.3,000/- per month as his monthly earnings. The case of the claimant is that he could not attend to his duties for a period of three months. Therefore, the Tribunal awarded an amount of Rs.9,000/-. However, I am inclined to grant Rs.10,000/- towards loss of income, by rounding off the amount.

13. From the above the claimant sustained three grievous injuries and one simple injury and as per the case of the claimant he is working as driver, and due to the accident, he is unable to attend driving works and due to the injuries sustained to his legs, he cannot continuously drive the vehicle for hours together and there is loss of efficiency in driving the vehicle for him, and thus there is loss of earning capacity.

The Tribunal considering the evidence of P.W.1, granted an amount of Rs.40,000/- towards loss of future earnings. Having regard to the facts and circumstances of the case, I am not inclined to interfere with the same.

14. The claimant is granted the following amounts:

1. For three grievous injuries	---	Rs.75,000 – 00
2. One simple injury	---	Rs. 5,000 – 00
3. Pain and suffering	--	Rs.20,000 – 00
4. Extra-nourishment, attendant charges, and transport charges	--	Rs.15,000 – 00
5. Loss of earnings during treatment period	--	Rs.10,000 – 00
6. Loss of future earnings	--	Rs.40,000 – 00

		Rs.1,65,000 – 00

15. Thus, having regard to the facts and circumstances of the case, the amount of Rs.74,000/- granted by the Tribunal is enhanced to Rs.1,65,000/- with interest at the rate of 7.5 per cent per annum from the date of the claim petition till the date of realization, and both the respondents are jointly and severally liable to pay the compensation.

16. On such deposit of compensation, the claimant is entitled to withdraw the same without furnishing any security.

17. The appeal is accordingly allowed in part.

18. Interlocutory Applications pending, if any, shall stand closed. No order as to costs.

M.G.PRIYADARSINI,J

DATE:28—11—2022
AVS