

THE HON'BLE SRI. JUSTICE PULLA KARTHIK

M.A.C.MA. No.2162 of 2007

JUDGMENT:

The appeal is filed by the claimant challenging the Judgment and decree passed in O.P. No. 286 of 2005, dated 20-04-2007 on the file of Chairman, Motor Accidents Claims Tribunal cum V Additional District Judge (F.T.C.) Ranga Reddy District, wherein the Tribunal awarded a sum of Rs. 40,000/- as against the claim of Rs. 2,00,000/- on account of the injuries sustained by him.

2. The case of the petitioner is as follows:

On 08-02-2005 at about 10.30 P.M., the appellant/petitioner was proceeding on his cycle from his house to Malhotra Shaving Products, Balanagar where he was working. When he reached near IDPL colony water tank, one Bajaj Caliber motor cycle bearing No. AP 10AB 1370 came from Balanagar in a rash and negligent manner and dashed the appellant's cycle. Due to the impact, the appellant fell down and received grievous injuries.

Immediately, the appellant was shifted to Apollo hospitals, Hyderabad for treatment. It is pleaded that the appellant incurred huge amount towards his treatment, and he suffered with severe pain and unable to attend his works.

3. The 1st respondent remained exparte before the Tribunal. The 2nd respondent filed his counter denying averments of the petition, and pleaded that the claim is highly excessive.

4. On the basis of the above pleadings the following issues are framed by the Tribunal:

1. Whether the accident occurred due to the rash and negligent driving of the driver of vehicle bearing No. AP 10 AB 1730 Bajaj Caliber?
2. Whether the vehicle involved in accident is insured with the Respondent No.2?
3. Whether the petitioner is entitled for compensation, if so, at what amount and against whom?

4. To what relief?
5. To prove his case the appellant himself examined as PW1. PW2 is the doctor who treated him. Ex's.A1 to A13 were marked on behalf of the appellant. Ex.B1 policy copy is marked on behalf of respondent No.2.
6. Heard both sides.
7. The appellant contends that the Tribunal had erred in not considering the loss of income for the period of 08-02-2005 to 07-07-2005 and further contended that the Tribunal erred in awarding Rs.30,000/- for two fractures with 8% to 10% is permanent disability.
8. In contra, the counsel for the respondent contended that the Tribunal had rightly passed an award on the basis of oral evidence and material on record. There is no error in the order and requested for dismissal of the appeal.
9. As seen from the evidence Ex.A11 and Ex.A12 issued by the employer of the appellant i.e. Malhotra Shaving Products Pvt. Ltd., in which it is certified that the petitioner

could not attend for the duty from 08-02-2005 to 07-07-2005 and as per the evidence on record, he had taken bed rest for that period. In the above certificate, it is stated that for the above loss of pay days, the Oriental Insurance Company Ltd., Balanagar has paid Rs.10,553/- towards workmen compensation amount. In view of the above, this Court is of the view that the appellant is entitled for 5 months income towards loss of earnings. As per the Ex.A-11 i.e. salary slip, the salary of the appellant is Rs.8,632/-. Hence, he is entitled for $\text{Rs.}8,632 \times 5 = \text{Rs.}43,160 - 10,553 = 32,607/-$.

10. Further, as per the evidence of PW2, who is the doctor who treated the appellant, that the appellant is required to undergo one more operation for removal of nail and screws and he deposed that the cost of operation will be around Rs.25,000/-. In view of the above, this Court is inclined to grant Rs. 25,000/- towards operation.

11. The evidence of the doctor coupled with the medical record and also the photos of the petitioner (Ex.A10) clearly

goes to show that the petitioner had sustained open fracture of left Tibia and Fibula which are grievous in nature. The petitioner also filed the X-Rays which were marked as Ex.A13 to show the said grievous injury and the nails fixed to the said injury after operation. The doctor also issued Ex. A9 disability certificate stating that the disability is about 8 to 10% for left lower limb.

12. The Tribunal had not justified in awarding Rs.30,000/- compensation towards injuries depending upon the disability, partial, full, temporary or permanent. Hence, this Court feels that it is appropriate to enhance the amount of Rs.30,000/- to Rs.40,000/- under this head.

13. Thus, this Court enhanced the compensation of claim under loss of earnings @ Rs.8,632 for 5 months which comes to $\text{Rs.}43,160 - 10,553 = \text{Rs.}32,607/-$, towards operation Rs.25,000/- and towards injuries depending upon the disability, partial, full, temporary or permanent the amount is enhanced from Rs.30,000/- to Rs.40,000/-. In total the enhanced amount comes to

Rs.32,607+Rs.25,000+Rs.10,000= Rs.67,607/- in addition to the already awarded compensation of Rs.40,000/-.

14. With the above modifications this appeal is disposed of and the compensation is enhanced to Rs.1,07,607/- with interest at the rate of 7.5% per annum. There is no order as to costs.

Pending miscellaneous petitions, if any, in this MACMA shall stand closed.

JUSTICE PULLA KARTHIK

Date: 21-10-2022
ASR