

THE HON'BLE SRI JUSTICE N.TUKARAMJI

M.A.C.M.A.No. 2750 OF 2006

JUDGMENT:

Heard the learned counsel for the appellant and the learned counsel for the 2nd respondent and perused the material.

2. The appellant/claimant/injured (hereinafter 'the petitioner') filed claim petition pleading that on 13.07.2002 while he was proceeding on his motorcycle bearing registration No.AP-25-G-5273 in Mailaram village limits, another motorcycle bearing registration No.AP-25-G-5345 (hereinafter 'the motorcycle') driven by its rider in rash and negligent manner dashed his motorcycle, as a result, he fell down and suffered grievous injuries all over his body. After the treatment, claiming medical expenditure, loss of income and earning capacity filed petition for compensation of Rs.2,00,000/-. The Tribunal after evaluating the evidence held that the accident was caused due to rash and negligent driving of the motorcycle and awarded Rs.15,000/-and

Rs.3,000/- for fracture and simple injuries, Rs.10,000/- towards medical treatment, Rs.5,000/- for pain and suffering and loss of earnings and Rs.3,000/- for extra nourishment, in total Rs.44,000/-.

3. Aggrieved by the quantum of compensation, the petitioner in this appeal contested that the Tribunal failed to appreciate the materials placed on record in assessing the compensation. Further he had incurred medical expenditure of Rs.1,00,000/- as there was continuation of medication even after the treatment in the Government Headquarters Hospital, Nizamabad. In addition, the tribunal failed to consider that the injuries suffered in the accident had resulted in loss of earning capacity. Therefore, prayed for reconsideration and to award just compensation.

4. The learned counsel for the 2nd respondent pleaded that the petitioner except the self serving oral claims, failed to place any legally acceptable evidence on record for granting compensation. However, the tribunal had leniently considered and awarded reasonable compensation, as such the claim for enhancement is untenable.

5. In the rival pleadings, the point arises for determination is:

Whether the compensation awarded to the petitioner is just and proper?

6. The petitioner as PW-1 deposed that he had suffered head injury and multiple injuries on upper and lower limbs, chest and other parts of his body. Whereas the injury certificate/ Ex.A-3, case sheet/Ex.A-9 are indicating that the petitioner had suffered lacerated wound on the lateral side of the left hand and right wrist and ABM dorsum of right wrist and the C.T. scan report/Ex.A-8 reveals the linear fracture of posterior wall of left, maxillary sinus posterior wall of sinusitis. By this material, petitioner sustaining injuries in the accident as noted in the medical record can be concluded.

7. The petitioner claimed more than Rs.1,00,000/- as medical expenditure, but no material has been placed. However, the tribunal considering the possibility of incidental expenditure and the treatment undergone in different hospitals, awarded Rs.10,000/-. This amount is found reasonable, hence confirmed.

8. Further the petitioner claimed loss of earnings during the period of treatment and also the disability affected his loss of income earning capacity. No document is filed to establish the physical disability much less there is a pleading to show how injuries/disability affected the income earning avocation. In absence of any convincing material and as admittedly the injury is on the lenient fracture in the area of sinusitis, no disability can even be presumed. However, considering the length of treatment and the occupation pleaded by the petitioner, the tribunal has awarded Rs.15,000/- for one fracture and Rs.3,000/- for simple injuries and Rs.5,000/- towards pain and suffering. Though the amounts were shown under different heads, in absence of any prescription to award injury specific compensation, this amount shall be considered as compensation for pain and sufferings. Noting the fact that there are injuries on both of upper limbs and fracture on maxillary sinus posterior wall of sinusitis and the period of treatment, enhancing the total amount towards pain and suffering to Rs.30,000/- and granting amount of Rs.5,000/- towards extra nourishment and

Rs.5,000/- towards loss of earnings during the period of treatment is found proper.

9. Therefore, the petitioner is eligible for the compensation as under:

Sl.No.	Head	Amount
1.	Medical expenditure	Rs. 10,000/-
2.	Extra nourishment	Rs. 5,000/-
3.	Loss of earnings during the period of treatment.	Rs. 5,000/-
4.	Pain and sufferings	Rs. 30,000/-
	TOTAL	Rs. 50,000/-

10. Accordingly, this appeal is partly allowed in the following terms viz.,

(i) the petitioner is awarded Rs.50,000/- (Rupees fifty thousand only) with interest @ 7.5% per annum from the date of petition till the date of realization and costs;

- (ii) the 1st and 2nd respondents are jointly and severally liable to pay the compensation and they are directed to deposit the awarded amount within one month from the date of receipt of a copy of this judgment; and;
- (iii) on such deposit, the petitioner is permitted to withdraw the entire amount.

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

Date:07.11.2022.
ccm

N.TUKARAMJI, J