

THE HONOURABLE SRI JUSTICE N. TUKARAMJI

M.A.C.M.A.No.1578 of 2007

JUDGMENT:

Heard Sri P.S.P. Suresh Kumar, learned counsel for the appellant and Sri A. Ramakrishna Reddy, learned counsel for the respondent No.2.

2. Dissatisfied and aggrieved by the quantum of compensation, the claim petitioner/injured (hereinafter “the petitioner”) filed this appeal, challenging the decree and order dated 06.11.2006 in O.P.No.2137 of 2004 on the file of the Motor Accidents Claims Tribunal-cum-II Additional Chief Judge, City Civil Court, Hyderabad.

3. The petitioners' case in succinct is that on 23.07.2004 while he was proceeding on the motor cycle bearing Registration No.AP-9-AO-2153 (for short, ‘the motor cycle’) at Indira Park, one Scorpio Car bearing registration No.AP-15-0001 (for short, ‘the Car’) driven

by its driver at high speed in rash and negligent manner dashed the motor cycle and caused severe injuries and he was shifted to the Hospital for treatment. Later, claiming medical expenditure, loss of income and disability, filed petition seeking compensation of Rs.1,50,000/-.

4. The Tribunal, after considering the material placed on record held that the accident occurred due to rash and negligent driving of the car and awarded Rs.15,000/- for pain and suffering and Rs.15,000/- for the fracture injury, Rs.38,386/- for medical expenses, Rs.10,000/- towards loss of income and Rs.5,000/- towards extra nourishment, transportation and other incidental expenses. In all, awarded Rs.83,386/- with interest at 7.5% per annum from the date of petition till the date of realization.

5. In the appeal, learned counsel for the petitioner vehemently contended that the injuries effected his

career and future prospects and even today he is suffering pain and inconvenience and not able to attend his daily chores. Further, pleaded that the Tribunal ought to have considered the physical disability certificate and the bills issued by Physiotherapist while granting the medical expenditure. Thus, he is entitled for more compensation.

6. Learned counsel for the respondent backed the reasoning of the tribunal in the Award and pleaded that all the petitioner claimed aspects were carefully considered by the Tribunal and just compensation has been granted. The contentions raised by the appellant in the appeal are unacceptable, hence, needs no interference and prayed for dismissal.

7. I have carefully considered the rival submissions and perused the record. At the outset, the accident, injuries and the liability of the respondents i.e., insured and insurer are not in dispute.

8. The Doctor/PW.2 deposed that the petitioner/PW.1 had suffered fracture of left femur and fracture of shaft of left femur for which, in surgical procedure, rods were implanted. The Ex.A-2/Discharge Summary of Kamineni Hospital, Ex.A-3/out patient cards are substantiating the petitioner's claim, hence it can be held that, the petitioner suffered the Doctor mentioned injuries in the accident.

9. The medical bills-Ex.A-5 placed on record are reflecting an amount of Rs.38,386/-. The Tribunal had awarded entire amount, as such no reason is found to defer, thus this conclusion is confirmed.

10. That apart, the petitioner filed bills/Ex.A-7 dated 01.04.2005 said to have been issued by Dr.Syed. Faheen, Physiotherapist, but no amount was granted as the doctor was not examined. However, considering the undenied assertion of the injured as PW1 and the possible need in the treatment, disregarding the

expenditure for physiotherapy , is found unfair. Hence, additional amount of Rs.5,000/- is granted towards physiotherapy expenses.

11. The petitioner claimed loss of income during the period of treatment. Further, pleaded that his occupation is business and used to earn monthly income of Rs.5,000/-. The Tribunal by considering the period of treatment and recovery had awarded two months of income at Rs.10,000/- under this head. As this inference is reasonable, the same is affirmed.

12. The Tribunal awarded Rs.15,000/- towards pain and suffering and Rs.15,000/- towards fracture. To note, granting injury specific amount is not the disposition of the compensation layout. Therefore, the amount allowed by the tribunal shall be deemed as the amount towards pain and sufferings. Considering the injuries and the period of treatment, awarding Rs.30,000/- under the head is found acceptable.

13. In addition, having regard to the facts and circumstances, awarding of Rs.5,000/- each for extra nourishment, transportation and other incidental expenses is found proper.

14. Furthermore, the petitioner pleaded that he has been suffering the physical disability and thereby loss of future earnings. In support, filed Ex.A-12/Disability Certificate issued by the Kamineni Hospital. It is settled proposition that the disability effecting the income earning activities is the criteria in assessment of compensation for the disability. The Doctor/PW-2's evidence is indicating that after the treatment, the petitioner had been recovered. In addition, the petitioner failed to explain the effect of physical disability on his earning capacity. Therefore, the loss of earnings due to physical disability is not considered. However, having regard to the presumable

inconvenience in enjoying the life due to the disability,
Rs.10,000/- is granted towards loss of amenities.

15. Thus, the petitioner is eligible to the amounts as under:

DESCRIPTION	AMOUNT (Rs.)
Medical expenses	38,386.00
For physiotherapy	5,000.00
Pain and suffering	30,000.00
Extra nourishment	5,000.00
Transportation	5,000.00
Incidental expenses	5,000.00
Loss of income during the period of treatment	10,000.00
Loss of amenities	10,000.00
TOTAL	1,08,386.00

16. Resultantly, the Appeal is allowed in part, in following terms.

(i) The appellant/claim petitioner is awarded compensation of Rs.1,08,386/- (Rupees one lakh eight thousand three hundred eighty six only) with interest at 7.5% per annum from the date of petition till realization;

(ii) The 1st and 2nd respondents/insured-owner and the insurer are jointly and severally liable to pay the compensation and they are directed to deposit the awarded amount with interest within one month from the date of receipt of copy of the judgment;

(iii) On deposit of the enhanced amount with interest, the claim petitioner is permitted to withdraw entire awarded amount.

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

N.TUKARAMJI, J

Date:01.07.2022

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