

THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**M.A.C.M.A. No. 1956 OF 2014****JUDGMENT:**

This appeal is filed under Section 173 of the Motor Vehicles Act for enhancement of compensation amount, aggrieved by the decree and judgment dt.31.10.2011 passed in M.V.O.P No.1233 of 2010 by the Chairman, Motor Accidents Claims Tribunal-Cum-VIII Additional District Judge (FTC) Warangal.

2. This is a case of injury. The appellant claimed Rs.3,00,000/- (Rupees Three Lakhs Only) and the Court below passed an award for Rs.1,10,000/- (Rupees One Lakh Ten Thousand Only).

3. Brief facts of the case are as follows:

On 14.04.2010, while the appellant was proceeding on his bike bearing no. APAD4249 from Ramnagar to Kashibugga and when he reached near police headquarters at 8:15 AM, one auto trolley bearing No.AP36Y2878 came from the opposite direction and dashed against the bike of the appellant as a result of which, the appellant fell down and sustained multiple injuries. The accident occurred due to negligent driving of an Auto-trolley.

The petitioner took treatment in a Hospital and his right femur was under POP for a prolonged period and he was also operated for his fracture and he also underwent physiotherapy treatment for improving from deformity and restricted muscular movements. Due to the said accident, the appellant filed M.V.O.P claiming compensation of Rs. 3,00,000/-.

4. In the Court below, learned counsel for the appellant contended that the appellant suffered a lot of pain during the course of treatment and even now his leg movements are restricted and he is experiencing pain. Even after prolonged treatment, there are no chances of complete recovery from muscular deformity disfunction and suffered permanent disability. The appellant passed M.Tech from Kakatiya Institute of Technology and Science, Warangal and the accident occurred during the period between his submission of his project work. He was keeping good health prior to the date of the accident and later secured employment on 06.10.2010 and he sustained a loss of income for five months. The 1st respondent is the owner of the Auto-trolley and the 2nd respondent is the insurer and both are liable to pay compensation. Moreover, PS Hanamkonda registered a case in Cr.No.91/T156/10 against the driver of the Trolley.

5. In the Court below, the 1st respondent remained ex parte. The 2nd respondent filed a written statement and contended that there was collusion between the appellant and the owner and there must be proof that both the appellant and the auto trolley driver ought to have a valid and effective driving license and further sought protection under Section 147, 149 and 170 of the M.V Act and prayed to dismiss the claim petition.

6. Based on the submissions made on either side, the court below framed issues. The appellant got himself examined as PW-1 and got marked Exs.A1 to A11. The Court below heard the matter at length and came to a conclusion that though the appellant claimed to calculate the loss of income by calculating his income as an Assistant Professor at Rs.18,000/- p.m, the Court below was inclined to fix the notional salary of the appellant to Rs.10,000/- p.m as he was not employed immediately after completion of M.Tech. Since the salary for the purpose of loss of income was fixed at the amount stated above for (05) months, he was entitled for Rs.10,000/- x 5 = Rs.50,000/- under that head. The Court below was further inclined to grant Rs.20,000/- towards the fracture injury which was operated upon and as per Ex.A7 as the appellant requires surgery for removal of the

implant, he was granted Rs.15,000/-. The Court below further granted an amount of Rs.3,000/- towards extra nourishment, Rs.2,000/- towards transport to hospital and Rs.15,000/- towards pain and suffering. Thus a total compensation of Rs.1,15,000/- was awarded to the appellant with an interest of 7.5% p.a from the date of petition till the date of realization. Aggrieved by the same, the present appeal is filed.

7. Heard both sides. Both counsels reiterated their contentions which were placed before the Court below.

8. Considering the arguments advanced and the facts thereof, this court is of the view that the aspect of loss of income, amount towards fracture injury which was operated and travel expenses was rightly dealt with by the Court below, hence the same is kept intact at Rs.50,000/-, Rs.20,000/- and Rs.2,000/- respectively. However, the pain and suffering of the appellant could be up to the removal of the interlocking nail and which would mean that the appellant would undergo further pain and suffering and under the pain and suffering head, the Court below granted only Rs. 15,000/- but it can be enhanced by Rs.18,000/- , which totals to Rs.15,000/ + Rs.18,000/- = **Rs. 33,000/-** (Rupees Thirty Three Thousand Only). For future surgery and

removal of implant, the Court below granted Rs.15,000/-, however, this Court feels it is not reasonable in view of the rising charges of the Hospitals as of today. In view of future surgery the amount awarded of Rs.15,000/- can be enhanced by Rs.18,000/- which totals to Rs.15,000/ + Rs.18,000/- = **Rs. 33,000/-**-(Rupees Thirty Three Thousand Only) and under the head of extra nourishments also, it is reasonable to enhance the amount of Rs.3,000/- by an addition of Rs.4,000/- which totals to Rs.3,000/- + Rs.4,000/- = Rs. **7,000/-** (Rupees Seven Thousand Only).

9. Hence, the total enhanced amount would sum up to Rs.50,000/- (Loss of Income) + Rs.20,000/- (Operation for fracture) + Rs.33,000/- (Enhanced amount towards pain and suffering) + Rs. 33,000/- Enhanced amount towards future surgery) + Rs.7,000/- (Enhanced amount towards extra nourishment) + Rs.2,000/- (Travel expenses) = **Total Rs.1,45,000/-** (Rupees One Lakh Forty Five Thousand Only). This Court is of the view that the interest rate of 7.5% p.a fixed by the Court below is justified.

10. In view of the above, the appeal is partly allowed by enhancing the compensation amount from Rs.1,10,000/- (Rupees One Lakh Ten Thousand Only) to Rs.1,45,000/- (Rupees One Lakh Forty Five Thousand Only) with an interest of 7.5 % p.a. from the date of petition till the date of realization. No order as to costs.

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

NAMAVARAPU RAJESHWAR RAO, J

8th day of February, 2023

BDR