

**HON'BLE SMT. JUSTICE LALITHA KANNEGANTI**

**M.A.C.M.A.No.4020 of 2008**

**JUDGMENT:**

This appeal is filed by the appellant/claimant seeking enhancement of the compensation granted in O.P.No.101 of 2003 by the VI Additional Metropolitan Sessions Judge-cum-XX Additional Chief Judge, Secunderabad, dated 25.03.2006.

2. Heard Mr. C. Vikram Chandra, learned counsel appearing for the appellant/claimant and Mr. N.S. Bhaskara Rao, learned counsel appearing for the respondent/Insurance company.

3. The brief facts are that on 28/29-12-2002 at about 2am, the petitioner was travelling in a DCM van bearing No.AP10T 7343 along with the vegetables for sale of the same in Monda Market and at the same time, the lorry bearing No.AP16X 7576 proceeding in the same direction dashed the DCM van, due to which, petitioner suffered close head injury with fracture of left temporal bone and also left frontal EDH, fracture of left Maxilla, injury to left upper eye lid and dislocation of right clavicle joint and other injuries all over the body. The petitioner was immediately shifted to Gandhi Hospital and since he lost consciousness, he was shifted to Sai Krishna Super Specialty Neuro Hopsital and he is still undergoing treatment and he took treatment in other hospitals also.

4. The respondent/insurance company has filed counter affidavit denying the manner of accident, rash and negligent driving on the part of

the driver of the lorry, the nature of injuries, income of the appellant/claimant and the amount claimed by the appellant/claimant etc.,.

5. The Tribunal on analyzing the evidence granted compensation of Rs.36,000/- with interest @ 6% per annum from the date of petition till the date of deposit.

6. Learned Counsel for the appellant/claimant submit that the appellant/claimant is unable to eat as he is unable to open his mouth on account of injury to Maxilla and he is taking only liquid food. On account of eye lid injury, he lost total vision of left eye and due to dislocation of clavicle joint, he cannot lift any weight. Several operations were conducted on him but he became permanent total disabled person. He submits that at the time of accident the appellant/claimant was aged about 35 years and he is earning an amount of Rs.3000/- per month.

7. Learned Counsel for the appellant/claimant further submits that as per the discharge card given by the Gandhi Hospital the appellant/claimant suffered close head injury, fracture of left temporal bone, thin frontal E.D.H, fracture of left maxilla bone, dislocation of right shoulder joint, laceration of upper eyelid. He submits that even as per the award passed by the court below, it is observed that the appellant/claimant

has suffered four grievous injuries but on that count no amounts were awarded to the appellant/claimant. Though the Doctor has given a certificate that appellant/claimant is suffering with 40% disability, the same was not considered by the court below on the ground that he is not the competent person to give such a certificate. He submits that though the Court below has observed that the appellant/claimant has taken treatment in Osmania Hospital, he has also taken CT scan and other tests in the private hospital for that a meager amount of Rs.3000/- was granted. He submits that the actual expenses that were incurred by the appellant/claimant were not considered by the court below and by virtue of this accident, appellant/claimant has suffered a lot and he could not do his business for a long while that aspect was also not considered by the Court below. Hence, they have filed this appeal seeking enhancement of the compensation.

8. Learned Counsel appearing for respondent-Insurance Company submits that the Doctor who has given the certificate of disability is neither the Doctor who has treated the appellant/claimant nor the Member of the Medical Board as such, the same cannot be considered. He submits that in fact, in the said common order passed by the Court below in all the OP's, the Doctor has given a common certificate to all of them stating that they have suffered 40% disability without any basis. It is submitted that the

Court below has rightly disbelieved the said certificate and has not taken into consideration. He submits that as the appellant/claimant has taken treatment in Gandhi Hospital, he is not entitled for any amount for the medical expenses. However, the court has already granted an amount of Rs3000/- for the X-rays that were taken. He submits that the amount that was granted by the Court below is just and reasonable compensation.

9. In the order impugned, the Court below has passed a common award in respect of three injured claimants as far as this appellant/claimant is concerned, he suffered close head injury with fracture of left temporal bone and also left frontal EDH, fracture of left Maxilla, injury to left upper eyelid and dislocation of right clavicle joint and other injuries all over the body and because of the injuries he sustained, for several days, he has not even been able to open his mouth and could not eat. The fractures that were suffered by the appellant/claimant were not taken into consideration by the Court below. For the four grievous injuries that are sustained by the appellant/claimant, he is entitled for an amount of Rs.1,60,000/-, for the pain and suffering, the Court below has granted just and reasonable amount of Rs.25,000/-, for extra nourishment, only Rs.2000/- was granted but as the appellant/claimant has suffered the injury to his mouth and as he was on liquid diet for long time, for the extra nourishment Rs.10,000/- would be appropriate amount, for the medical

expenses, the Court below has granted a very meagre amount of Rs.3000/- but as the appellant/claimant suffered grievous injuries, for the medical expenses, Rs.15,000/- would be an appropriate amount, for attendant charges, the Court below has granted only an amount of Rs.2500/- , Rs.10,000/- would be an appropriate amount, for the head of transportation no amount was granted, Rs.10,000/- is granted under the head transportation. The Court below has taken into consideration Rs.3000/- as income of the appellant/claimant and the loss of earnings would come to Rs.6000/-.

10. In view of the above discussion, the appellant is entitled for the compensation under the following heads:-

|    |                     |   |                      |
|----|---------------------|---|----------------------|
| 1) | Four fractures      | = | Rs.1,60,000/-        |
| 2) | Loss of Earnings    | = | Rs. 6,000/-          |
| 3) | Medical Bills       | = | Rs. 15,000/-         |
| 4) | Attendant Benefits  | = | Rs. 10,000/-         |
| 5) | Pain and Sufferings | = | Rs. 25,000/-         |
| 6) | Extra Nourishment   | = | Rs. 10,000/-         |
| 7) | Transport           | = | Rs. 10,000/-         |
|    | Total               | = | <u>Rs.2,36,000/-</u> |

11. In the result, the Motor Accident Miscellaneous Appeal is allowed

enhancing the compensation amount awarded by the Tribunal from Rs.36,000/- to Rs.2,36,000/-.

- (a) The enhanced amount shall carry interest at 7.5% p.a. from the date of petition till the date of realization.
- (b) Appellant shall pay the court fee on the enhanced amount.
- (c) The respondent shall deposit the amount into Court within (8) weeks from the date of receipt of copy of the judgment. On such deposit, the claimant is permitted to withdraw entire amount without furnishing the security.

Miscellaneous applications, pending if any, shall stand closed.

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**LALITHA KANNEGANTI, J**

25<sup>th</sup> January, 2023

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