

HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

M.A.C.M.A.No.4027 of 2008

JUDGMENT:

The appellant has filed the present appeal aggrieved by the order and decree dated 16.11.2005 passed in O.P.No.92 of 2005 by the Motor Vehicle Accidents Claims Tribunal Cum I Additional District Judge, Karimnagar.

2. Sri V. Ravi Kiran Rao, learned Counsel for the appellant submits that the appellant filed a petition seeking compensation of an amount of Rs.2,00,000/- and the Court below had granted an amount of Rs.1,83,500/-. He submits that the appellant along with his friend was proceeding on a motor cycle from Godavarikhani to Srirampur and when they reached Godavarikhani bridge at about 4:30 P.M., one private bus bearing No.AP-IU-3042 came in opposite direction in a rash and negligent manner and dashed against the motor cycle of the appellant. As a result, the appellant and his friend have fallen down and sustained injuries. The appellant sustained fracture injuries and was immediately shifted to Medbone Trauma and Ortho Care private Hospital. The appellant was found to have sustained fracture to right leg femur shaft, fracture to both bones of right leg, fracture of both bones of right forearm, a head injury and other simple injuries and he was operated for the fracture of the

femur and rods were inserted. The appellant was advised to take bed rest for six months and the appellant has been taking regular treatment and incurred Rs.60,000/- towards medical expenditure. He submits that the appellant was aged 24 years and was earning Rs.5000/- per month by doing fishing work. He submits that as per the Doctors report, the appellant has sustained 40% disability. He submits that the Court below without taking into consideration all these aspects, has granted an amount of Rs.1,83,500/-.

3. Sri A.V.K.S. Prasad, learned Standing Counsel appearing for respondent No.3 submits that taking into consideration the injuries that are sustained by the appellant and though the disability is assessed as 40%, as the appellant is a fisherman, the Court below had refused to accept the same and taken the disability at 10%. He submits that there is no illegality with the same and compensation that is awarded by the Court below is a just and reasonable compensation.

4. The Court below had observed that the appellant was admitted on 27.05.2004 with fracture injury on femur right side, fracture of both bones of right leg and fracture of right forearm and hand injury. He was operated on 29.05.2004 and

interlocking nailing was done for the right femur. POP was applied to the right leg and suturing of the multiple injuries was done. He was discharged on 13.06.2004 with an advice to take bed rest for a month and follow up treatment for 1 ½ months after the period of 6 months and surgery was done to the right forearm on 01.06.2004 and taking into consideration the above evidence, the Court has awarded Rs.45,000/- under the head 'pain and suffering' and taking into consideration the medical bills, the Court has awarded an amount of Rs.44028/- and for the future surgery, the Court has awarded Rs.20,000/-.

5. However, the Court below has refused to take into consideration Rs.5000/- as appellant's monthly income but taken the same as Rs.2000/-. Even in case of a daily wage labourer also, the Court has been considering Rs.5000/- per month as minimum monthly income. In case of the appellant also, this Court is inclined to take into consideration Rs.5000/- per month as minimum income and when it comes to disability when the Disability Certificate is issued stating that petitioner suffered 40% disability, the Court below has considered it as 10%. The conclusion of the Court below is without any basis. In fact, the Court has observed that the stiffness of the hip and knee joint

would not effect the avocation more than 10% as it would not involve much squatting. When the Doctor has given a certificate to show that the appellant is suffering with 40% disability, the Court cannot come to such a conclusion that the disability is only 10%. The Court below has also failed to take into consideration loss of earnings, future prospects, extra nourishment, transport and loss of amenities.

6. In view of the same, the Appeal is allowed by enhancing the compensation under the following heads:-

1)	5000 income X12 months=60,000X18 X40% Disability	=	Rs.4,32,000/-
2)	Loss of Earnings	=	Rs. 40,000/-
3)	Future Prospects	=	Rs.1,72,000/-
4)	Medical Bills	=	Rs. 44,028/-
5)	Attendant Benefits	=	Rs. 25,000/-
6)	Pain and Suffering	=	Rs. 45,000/-
7)	Extra Nourishment	=	Rs. 20,000/-
8)	Transport	=	Rs. 15,000/-
9)	Loss of Amenities	=	Rs. 15,000/-
	Total	=	<u>Rs.8,08,028/-</u>

The claimant shall pay the Court fees on the enhanced

amount. The appellant is entitled for an interest of 7.5% on the enhanced amount of compensation from the date of petition till the date of realization. Respondent-Insurance company/Corporation shall deposit the amount within eight (08) weeks from today. On such Deposit, the appellants are entitled to withdraw the amount.

7. Though all the respondents are held liable, in view of the judgment of the Apex Court in U.P. State Road Transport Corporation v. National Insurance Company Limited¹ and in U.P. State Road Transport Corporation v. Kulsum², the Insurance Company is solely liable to pay the compensation. No order as to costs.

Miscellaneous applications, pending if any, shall stand closed.

LALITHA KANNEGANTI, J

23rd January, 2023

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¹ 2019 ACJ Supreme Court 269

² 2011 ACJ Supreme Court 2145