

HONOURABLE SMT. JUSTICE M.G. PRIYADARSINI

M.A.C.M.A. No.2808 of 2019

JUDGMENT:

Being not satisfied with the quantum of compensation awarded in the award and decree, dated 07.02.2019 made in M.V.O.P.No.1035 of 2014 on the file of the XI Additional Chief Judge, City Civil Court, Hyderabad (for short “the Tribunal”), the appellant/claimant preferred the present appeal seeking enhancement of the compensation.

2. Brief facts of the case are that the minor appellant through her father, filed a petition under Section 166 of the Motor Vehicles Act claiming compensation of Rs.20,00,000/- for the injuries sustained by her in a road accident that occurred on 09.02.2014. According to the appellant, on 09.02.2014 while she was returning to her house at 3rd Incline of Kothagudem Town, one Auto Trolley bearing No.AP 37 TC 3981, owned by respondent No.1 and insured with respondent No.2, being driven by its driver in a rash and negligent manner at high speed, dashed the appellant, as a result of which, the appellant sustained fracture to her nasal bone and right femur. Immediately after the accident, the appellant was shifted to Mamata Hospital, Khammam and the father of the appellant had incurred Rs.1,00,000/- towards medical expenses and she also required another amount of Rs.50,000/- for removal of the

rod which was inserted to her right femur. It is further stated that due to fracture of nasal bone, the face of the appellant was disfigured and her right leg was shortened due to fracture of right leg femur, therefore, she laid the claim against the respondents, seeking compensation.

3. After considering the claim and the counter filed by respondent No.2, and on evaluation of the evidence, both oral and documentary, the learned Tribunal has partly allowed the O.P. and awarded compensation of Rs.1,37,000/- with interest at 9% per annum. Challenging the quantum of compensation awarded, the present appeal is filed by the appellant/claimant.

4. Heard learned counsel for the appellant and learned Standing Counsel for respondent No.2.

5. Learned counsel for the appellant mainly submits that the quantum of compensation awarded by the Tribunal is on lower side and seeks enhancement of the same. It is further submitted that the Tribunal did not award any amount under the heads of attendant charges, medical expenses, future medical expenses and also loss of amenities in life and marriage prospects.

6. Per contra, the learned Standing Counsel for the Insurance Company submits that the quantum of compensation

awarded by the Tribunal is based on evidence and the same needs no interference.

7. The finding of the Tribunal with regard to the manner in which the accident took place has become final as the same is not challenged either by the owner or insurer of the vehicle.

8. Insofar as the quantum of compensation is concerned, at the time of accident, the appellant was aged about 11 years. At the tender age of 11 years, the face of the appellant was disfigured due to fracture of nasal bone and her right leg was shortened due to fracture of right femur. No amount can compensate the loss sustained by the appellant at the very tender age. As per the evidence of P.W.2, there is a limping in the right leg and it may be 5 to 10% permanent disability and such limping was due to shortening of leg by 1 cm. and such shortening of leg may not get corrected in future. Further, the evidence of P.W.3, neuro surgeon, shows that the appellant may get headache and epilepsy (fits) due to fracture of nasal bone and that the comprehensive deformity is at 10 to 15% and there will be slur and stammering in the conversation. Considering the evidence of P.Ws.2 and 3, the Tribunal has rightly awarded Rs.1,00,000/- towards loss of income for the disability sustained by the appellant.

9. So far as the loss of amenities and loss of expectation of life is concerned in ***Kavita v. Deepak and others***¹ the Apex Court held that victims of accident, who are disabled either permanently or temporarily, adequate compensation should be awarded not only for the physical injury and treatment but also for the loss of earning and inability to lead a normal life and enjoy amenities, which one would have enjoyed had it not been for the disability. The Supreme Court further held that the amount awarded under the head of loss of earning capacity is distinct and does not overlap with amount awarded for pain, suffering, loss of enjoyment of life and medical expenses. Relying upon the decision of ***Nizam's Institute of Medical Sciences v. Prasanth S.Dhananka***², the Apex Court also held that "assuming the claimant's life expectancy to be 55 years, we deem it appropriate to award a sum of Rs.3,00,000/- under the head of loss of amenities and loss of expectation of life".

10. In the instant case, since the appellant has sustained 15% of the disability because of the shortening of her right leg and there was stammering in conversation, this Court deems it fit to award a sum of Rs.1,00,000/- towards loss of amenities and loss of expectation of life. Further, the appellant has taken

¹ (2012) 9 SCC 604

² (2009) 6 SCC 1

treatment in Mamatha Hospital, Khammam, for a considerable period. Thus, looking into the nature of injuries sustained by the claimant, nature and period of treatment undergone by her and the amount spent by her towards medical expenses, transportation, attendant charges and extra nourishment, this Court feels that the appellant is entitled to the following amount under various heads.

Sl. No.	Name of Head	Awarded by Tribunal Rs. Ps.	Awarded by this Court Rs. Ps.
1.	Pain and suffering	20,000.00	20,000.00
2.	Future Medical Expenses	--	25,000.00
3.	Transportation charges	5,000.00	10,000.00
4.	Extra nourishment	10,000.00	10,000.00
5.	Attendant charges	--	5,000.00
6.	Two fracture injuries	--	50,000.00
7.	Damages to Cloths	2,000.00	2,000.00
8.	Compensation for shortening of leg	1,00,000.00	1,00,000.00
9.	Loss of amenities in life i.e., marriage prospects etc.	--	1,00,000.00
	TOTAL	1,37,000.00	3,22,000.00

11. In the result, the appeal is allowed in part enhancing the compensation from Rs.1,37,000/- to Rs.3,22,000/-. The enhanced amount shall carry interest at 7.5% p.a. from the date of petition till the date of realization. The 2nd respondent is directed to deposit the said amount within two months from the date of receipt of a copy of this judgment. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE M.G. PRIYADARSINI

31.01.2023
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HONOURABLE JUSTICE M.G. PRIYADARSINI

M.A.C.M.A. No.2808 of 2019

DATE: -01-2023