

HON'BLE SMT. JUSTICE G. ANUPAMA CHAKRAVARTHY

M.A.C.M.A.No.3821 of 2008

JUDGMENT :

This appeal is arising out of the orders in O.P.No.1000 of 2008, dated 19.12.2012 on the file of Motor Accident Claims Tribunal-cum-IV Additional District Judge (FTC), Nizamabad

2. For the sake of convenience, the parties are referred to as arrayed in the O.P.

3. The appellant is the claimant. The O.P. was filed by the claimant under Section 166(1)(a) of the Motor Vehicles Act, claiming compensation of Rs.1,00,000/- on account of the injuries sustained by the claimant in the accident, which occurred on 27.10.2002 at 11.00 a.m. The said accident occurred, while the claimant was travelling in an Auto bearing No.AP-25-T-9925 and when it reached in front of Balaji Petrol pump, the driver of the Auto drove it at a high speed in a rash and negligent manner, dashed against a person named, Sailoo, and as a result, the said person and also the inmates of the Auto including the claimant sustained injuries and fractures. The claimant sustained fractures

to the right thigh, right wrist bone, injuries on left knee and grievous injuries to various parts of his body.

4. Basing on the complaint of one Mohd. Mukram, a case was registered against the driver of the Auto in Crime No.209 of 2002 for the offence punishable under Section 337 of IPC on the file of Armour Police Station. The claimant incurred huge amounts for his medical treatment, other expenses, also sustained permanent disability and lost his earning capacity. At the time of accident, the claimant was cultivating the lands, doing vegetable business, earned Rs.8,000/- per month and was aged about 28 years.

5. A detailed counter affidavit was filed by the respondent/Insurance Company disputing the age, income, occupation and also the medical expenditure incurred by the claimant. Further, it was contended that there was no negligence on the part of the driver of the Auto.

6. The Tribunal, after considering the oral and documentary evidence on record, granted a compensation of Rs.40,000/-.

7. Being aggrieved as to the quantum of compensation awarded by the Tribunal, the claimant has filed this appeal for enhancement of compensation. So, the appreciation of evidence would be with respect to the quantum alone.

8. Heard learned counsel for both the parties and perused the record.

9. It is contended by the learned counsel for the claimant that the Tribunal has erred in not considering the income of the claimant as Rs.8,000/- per month and also did not consider the disability and therefore prayed to consider the income and disability while granting compensation and also to grant compensation under the other notional heads.

10. On the other hand, the learned counsel for the 2nd respondent/Insurance Company contended that there is no error or irregularity in the orders passed by the Tribunal so as to interfere with the same, and therefore, prayed to dismiss the Appeal by confirming the judgment of the Tribunal.

11. On perusal of the entire evidence on record, there is no dispute as to the manner of the accident which occurred on 27.10.2002. Admittedly, the age of the claimant as on the date of the accident was 28 years as per Ex.A-2/Medical Certificate.

12. The Hon'ble Apex Court in the case of **Ramachandrappa v. Royal Sundaram Alliance Insurance Co. Ltd¹**, taken the income of the deceased/coolie, as Rs.4,500/- per month. Though it is contended that the claimant was a vegetable vendor and was doing cultivation as on the date of the accident, there is no documentary evidence on record to prove the occupation of the claimant as aforesaid. Further, the Tribunal did not consider the income of the deceased but granted the compensation in lumpsum. Considering the above said proposition, the income of the claimant can be fixed as Rs.4,500/- per month for the accident which occurred in the year 2002.

13. As per the oral evidence of the Doctor/P.W.2 and documentary evidence i.e. Ex.A-2/Medical Certificate, the claimant sustained the following injuries:

¹ (2011) 13 SCC 236

- “1. Pain and swelling left thigh corresponding X-ray revealed fracture of left femur.
2. Pain and swelling right wrist X-ray shows fracture of scaphoid bone.
3. Four x two cm abrasion left knee.
4. Contusion left side of chest.”

14. Admittedly, the evidence of PW-2/Doctor is silent about the permanent disability sustained by the claimant and no documentary evidence is produced to that effect.

15. It is relevant to note that the Tribunal has awarded compensation to the claimant under the following heads:-

1. Two grievous injuries	:	Rs.10,000/-
2. Two simple injuries	:	Rs.2,000/-
3. Medical expenses	:	Rs.10,000/-
4. Pain and suffering	:	Rs.10,000/-
5. Loss of earnings for 5 months:		Rs.7,500/-
7. Transport & extra-nourishment:		Rs.500/-
Total	:	Rs.40,000/-

16. The learned counsel for the appellant relied on the judgment in **New India Assurance Co. Ltd., Visakhapatnam v. Korukonda Appa Rao & another**², wherein, it is held at para 9 as under:

² 2010 (6) ALD 566

“I shall in the first instance deal with the question whether the Tribunal erred in granting compensation to the injured claimants despite the fact that they did not examine the doctor who treated them for the injuries. It is the contention of the appellant/insurance company that in the absence of evidence of doctor, it is not possible for the Tribunal to grant any compensation to the injured. It may be stated that in all the cases, the compensation was awarded only to the simple and grievous injuries, but not in respect of any permanent disability. The proceedings under Sec.166 of the Motor Vehicles Act are summary in nature and the Motor Vehicles Act is a beneficial legislation intended to provide just and reasonable compensation to the victims of the motor vehicle accidents to the extent possible, and the provisions have to be construed in favour of the claimants. Further, the injured-claimants filed copies of injury certificates which are marked as Ex. A-2. The said documents indicate the injuries sustained by the claimants and they were marked without any objection from the appellant-insurance company. This apart, there is oral testimony of the injured-claimants in regard to the injuries sustained by them. There is no absolute proposition of law to the effect that in the absence of the evidence of the doctor, the Tribunal cannot award any compensation, more particularly, when the injury certificates were brought on record. I am of the considered view that it is well within the competence of the Tribunal to award just and reasonable compensation basing on the oral evidence of the claimants and the injury certificates brought on record by them. Therefore, this point is answered against the insurance company.”

17. Considering the aforesaid proposition, this Court is of the considered view that the claimant is entitled for more compensation than awarded by the Tribunal. The claimant is entitled for Rs.8,000/- for each grievous injury and Rs.3,000/- for

each simple injury. Further, the claimant is also entitled for an amount of Rs.25,000/- towards pain and suffering as he sustained two fractures as per Ex.A-2/medical certificate. Though it is contended by the learned counsel for claimant that the claimant incurred Rs.70,000/- towards medical expenses, as there is no documentary evidence on record to that effect, he is entitled only for an amount of Rs.25,000/- towards medical expenses, considering the evidence of PW-1 that he underwent treatment in a private hospital i.e. Amrutha Lakshmi hospital, Nizamabad, immediately after the accident. As per the evidence of PWs.1 and 2, the claimant suffered loss of earnings for a period of two months due to the injuries sustained by him in the accident, therefore, he is entitled for an amount of Rs.9,000/- (Rs.4,500/- X 2). Further, the claimant is also entitled to Rs.10,000/- towards transportation, attendant charges and extra-nourishment.

18. Thus, the claimant is entitled for compensation as under:

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|--------------------------|---|-------------|
| 1. Two grievous injuries | : | Rs.16,000/- |
| 2. Two simple injuries | : | Rs.6,000/- |
| 3. Medical expenses | : | Rs.25,000/- |
| 4. Pain and suffering | : | Rs.25,000/- |

5. Loss of earnings for 2 months:	Rs.9,000/-
6. Transport & extra-nourishment and attendant charges	: Rs.10,000/-
Total	: Rs.91,000/-

19. Accordingly, the appeal is allowed, granting a total compensation of Rs.91,000/- to the claimant with costs and interest at the rate of 7.5% per annum from the date of petition till the date of realization, jointly and severally payable by respondent Nos.1 and 2 within two months from the date of receipt of a copy of this order. The claimant is permitted to withdraw the entire amount of compensation, as the accident occurred in the year 2002.

Pending miscellaneous applications, if any, shall stand closed.

G.ANUPAMA CHAKRAVARTHY, J

Date: 05.01.2023

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