

HON'BLE SMT JUSTICE J.UMA DEVI

MA CMA No.465 of 2010

JUDGMENT:

This appeal is preferred by the claimant before the court below, against the judgment, dated 12.11.2008, passed by the Motor Accidents Claims Tribunal-cum-III Additional District Judge, (FTC), L.B.Nagar, Ranga Reddy District, in O.P.No.930 of 2004, with the main grievance that the compensation awarded to him in respect of multiple injuries he received in the accident, that occurred on 30.11.2004, is not fair and reasonable.

2. For the sake of convenience, the parties hereinafter will be referred as they were arrayed in the O.P.

3. The factual background of the case, in brief, is as follows:

On 30.11.2004 at about 07:30 PM while the petitioner was proceeding on his bicycle from Nacharam to Habsiguda, on the way near Zee point hotel, Ravinder Nagar, one lorry bearing NO.APQ3947 came at high speed and dashed the petitioner from his back side, due to which he sustained multiple injuries all over the body. Soon after the accident he was taken to Gandhi Hospital, Secunderabad, for treatment. The Station House Officer of Nacharam Police Station registered a case in Crime No.301 of 2004 under Section 337 of IPC against the driver of the lorry, who caused the accident and investigated the case. It was further asserted by the petitioner that he was aged about 22 years by the date of the accident. He was hale and healthy prior to the accident and was earning Rs.4,000/- per month by working as a barber. In the above mentioned accident, he

received fracture injury to left leg and elbow apart from other multiple injuries. He took treatment as an inpatient in Gandhi Hospital for more than two months. Though he took treatment for a period of more than two months, the fractured leg not regained its normal position. The petitioner having become disabled, on account of the fracture injury to left leg and to left elbow, laid the claim against the owner and insurer of the lorry bearing No.APQ 3947 which caused accident to him.

4. The claim made against the owner and insurer of the offending lorry was contested by the 2<sup>nd</sup> respondent viz., New India Assurance Company limited. The owner of the lorry remained *ex parte*. The 2<sup>nd</sup> respondent-Insurance Company, though denied the narration made by the petitioner as to the manner of the accident and the negligence on the part of the driver of the lorry bearing No.APQ 3947, did not choose to examine any witness disproving the testimony of the petitioner, who deposed in clear terms that due to the negligent driving of the aforementioned lorry by its driver, he received injuries in the accident dated 30.11.2004. The policy of the crime lorry alone was marked as Ex.B1 by the Insurance Company.

5. The learned trial judge, on close scrutiny of the evidence of PW1 and Exs.A1 to A4, held due to the rash and negligent driving of the driver of the crime lorry, the accident was caused to the petitioner.

6. This appeal is filed by the petitioner with the main grievance that he has not been adequately compensated. On close reading of the grounds, urged by the petitioner in the

appeal grounds, it is understood that the only question which remains to be answered is “whether the compensation awarded to the petitioner in respect of the injuries he received in the accident, dated 30.11.2004, is fair and reasonable?”

7. It is evident from Ex.A4-copy of MLC issued by the Gandhi Hospital and Ex.A5-original discharge summary card of the petitioner, that the petitioner was admitted in the said hospital on 30.11.2004 with grievous injury to left shaft femur and for such injuries he underwent survey on 20.12.2004 and was discharged on 31.01.2005. A bare perusal of Ex.A4 and A5 would make it clear that the petitioner took treatment in the Gandhi Hospital from 30.11.2004 and was discharged on 31.01.2005 i.e., for a period of two months. Though it is evident from Exs.A4 and A5 that the petitioner took treatment for such a long period of two months and underwent surgery for correction of fractured left femur bone, the court below without proper appreciation of the said fact, which is born on record, granted meagre compensation of Rs.20,000/- under the head of pain and suffering.

8. As it is opined that the compensation awarded to the petitioner under the head of pain and suffering is not fair and reasonable, the same is enhanced to Rs.40,000/- from Rs.20,000/-.

9. It is also noticed from the contents of the award that a sum of Rs.2,000/- is awarded under the head of extra nourishment and Rs.1,000/- under the head of transportation. As it is felt that the amount awarded under the head of extra

nourishment and transportation charges is not reasonable and fair, the same is enhanced to Rs.10,000/- and Rs.5,000/- respectively.

10. The Tribunal taking into consideration of Ex.A6-Medical Bills and Ex.A8-Medical Bills, which indicate that a sum of Rs.34,461.25/- is incurred by the petitioner towards treatment, has awarded only a sum of Rs.25,000/- towards treatment and medicines though it is evident from the material on record that the petitioner took treatment in Gandhi Hospital for a period of two months at the initial point of time, later in the Jayakrishna Hospital, Ramanthapur. The Tribunal taking note of aforementioned facts, spoken to by him as to the treatment taken by him in the Gandhi Hospital for a period of two months at the initial point of time, later in a private hospital i.e., Jayakrishna Hospital, Ramanthapur by incurring huge expenditure, ought to have awarded reasonable amount under the head of medical expenditure. As the amount of Rs.25,000/- awarded by the Tribunal towards medical expenditure is very low and meagre, the same is enhanced to Rs.40,000/-.

11. It is also noticed on perusal of the award under challenge that no amount is awarded under the head of attendant charges though it is apparent from the material on record that the petitioner was compelled to take treatment in Gandhi Hospital for a period of more than two months as an inpatient at the initial point of time, later in a private hospital. Taking note of the aforementioned fact, which has been proved by the petitioner, by exhibiting Ex.A4 and A5 and by examining him as a witness,

this court is of the view that awarding of compensation of Rs.5,000/- towards attendant charges is fair and reasonable.

12. The petitioner, in all, thus is entitled to get total compensation of Rs.1,00,000/-. The details of compensation, which he is entitled, under various heads are as is indicated below:

Pain & suffering	-	Rs.40,000/-
Extra nourishment charges	-	Rs.10,000/-
Transportation charges	-	Rs. 5,000/-
Medical expenditure	-	Rs.40,000/-
Attendant charges	-	Rs. 5,000/-
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		Rs.1,00,000/-
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13. The award of the Court below is modified as to the extent indicated above. The compensation awarded is payable by the respondents 1 and 2 jointly and severally together with interest at 7.5% per annum from the date of filing of the petition till realisation.

14. Accordingly, the MA CMA is partly allowed. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

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JUSTICE J.UMA DEVI

July 31, 2018  
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