

**K. Kumar Vs. S. Abdulla**

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**Court :** Andhra Pradesh

**Decided On :** Aug-27-2007

**Reported in :** 2007(6)ALD111

**Judge :** G. Yethirajulu, J.

**Appeal No. :** C.M.A. No. 362 of 2003

**Appellant :** K. Kumar

**Respondent :** S. Abdulla

**Advocate for Pet/Ap. :** K. Rathangapani Reddy, Adv.

**Judgement :**

**G. Yethirajulu, J.**

1. This Civil Miscellaneous Appeal has been preferred by the claimant in M.V.O.P. No. 44 of 2000 on the file of the Chairman, Motor Accident Claims Tribunal-cum-III Additional District Judge, Kurnool. He filed the O.P. claiming compensation of Rs. 8,00,000/- on account of disability suffered by him due to an accident occurred with a tractor and trailer on 16.10.1999. The Tribunal awarded Rs. 2,51,000/- towards compensation under various heads.

2. Being aggrieved by the order of the Tribunal dated 15.02.2002, the claimant preferred the present Civil Miscellaneous Appeal contending that the

compensation awarded by the Tribunal is on lower side.

3. On 16.10.1999 the claimant along with another person was proceeding with a cycle from Dhone to his village. In the opposite direction, one tractor along with trailer came and dashed against the cycle, as a result of which, they sustained injuries. The Tribunal held that the accident occurred due to the rash and negligent driving of the driver of the tractor and trailer. The owner of the vehicle and the insurance company were jointly and severally made liable to pay the compensation.

4. The claimant contended that in the accident he suffered injuries to his back bone, waist and on right hand and also he sustained fractures to his right hand and back bone. He took treatment in the Government General Hospital, Kurnool as an inpatient for two months. Due to the nature of injuries, the claimant is suffering from para plegia (sensory loss of lower limbs). He is unable to sit and is not in a position to attend the nature calls. The mother of the claimant attending on him and he is leading very miserable life due to the accident.

5. Ex.A.2 wound certificate discloses that on the date of accident, the claimant was examined at Government General Hospital, Kurnool and the following observations were made by the Doctor.

i) A lacerated injury was present over the lower end of right arm, which extended into middle of fore arm of size 15 x 7 cm. Bleeding present. Muscle deep. Blood vessels are exposed.

ii) An abrasion present over medial aspect of right malleolus of size 2 x 1 cm. Red in colour.

iii) Patient complained that he is unable to move his lower limbs and movements are not possible.

X-ray discloses partial compression of D.12 and L.1 bones in the spine. Right arm including forearm shows the fracture of humerax. The Doctor opined that the injuries 1 and 3 are grievous in nature and injury No. 2 is simple in nature. As per the Wound Certificate, the claimant was 15 years old as on the date of accident.

6. PW.2, the claimant himself deposed that he was treated as an inpatient in Government General Hospital, Kurnool for three months. Prior to the accident he was working as a mason and was getting Rs. 60/- per day. After the accident, he is unable to sit and stand and not in a position to walk. He is also not able to attend calls of nature and his mother is helping him.

7. PW.3 the Doctor who treated the claimant deposed that the claimant was admitted on 16.10.1999 with a fracture of shaft humerous on right side. There was also DT.12 wedge compression with para plegia. Debradment was done for the injury of right upper arm on 29.10.1999 and skin grafting was also done on 12.11.1999. He was discharged on 20.12.1999. On 30.10.2000 he examined the claimant and found that there was paralysis to both the lower limbs. There was also weakness of handgrip. The claimant cannot sit or squat without any support. He needs assistance even to attend calls of nature. His disability is permanent and needs one attendant throughout his life. He cannot do any work. The percentage of disability suffered by the claimant is 100%.

8. The Tribunal in paragraph No. 10 of the judgment while recording the evidence of the claimant as PW.1, observed that the claimant was brought to the Court by one person by holding him with hands. PW.3 further deposed that the claimant was suffering from para pleagia i.e., loss of sensation of lower limbs and functionless. Basing on the evidence of PW.3, the Tribunal determined the age of the claimant as 15 years as on the date of accident. The Tribunal further observed that the claimant is not sufficiently educated. He stopped his studies at 4th class and residing in a village. By taking into consideration the above aspects, the Tribunal came to a conclusion that the claimant is able to derive the income of Rs. 50/- per day if he would not have suffered the disability. It was further observed that the claimant may not get coolie work on all the days in a village and therefore, the learned Judge came to a conclusion that the claimant may get Rs. 50/- per day for 25 days in a month. On the basis of that, the annual income of the claimant was assessed at Rs. 15,000/-. Since the claimant was 15 years old, the multiplier of 15 was adopted and after multiplying with the annual income, the total loss of income was assessed at Rs. 2,25,000/-. The claimant claimed Rs. 2,50,000/- towards loss of future earnings and the Tribunal awarded Rs. 2,25,000/- under this

head. The claimant claimed a sum of Rs. 25,000/- towards medical expenses. The Tribunal while observing that the claimant was treated in the Government General Hospital, Kurnool, medical expenses was not granted. However, Rs. 5,000/- was granted towards extra nourishment during the period of hospitalization. The claimant claimed Rs. 1,00,000/- towards compensation for pain and suffering. The Tribunal while observing that the claimant sustained two grievous injuries and one simple injury granted Rs. 5,000/- for each grievous injury and Rs. 1,000/- for simple injury, making the total compensation of Rs. 11,000/- towards pain and suffering. The claimant also claimed Rs. 1,00,000/- towards loss of amenities, but the Tribunal awarded Rs. 10,000/- under this head.

9. The learned Counsel for the claimant contends that the amount of compensation awarded by the Tribunal under the heads of medical expenses, extra nourishment, pain and suffering and loss of amenities is very meagre. He further submits that the Tribunal erred in taking the monthly income of the claimant on lower side

10. In support of his contention, the learned Counsel for the appellant- claimant relied on a decision of the Supreme Court in Nagesh v. M.S. Krishna : (1997)8SCC349 . In the said case, the claimant suffered serious injuries in a motor accident and on account of that he was hospitalized for about four months and has undergone serious surgical operations and even after the treatment, he was not cured and has been paralyzed for life, for which the extent of disability was assessed by the court below at 95%. In such circumstances, the Supreme Court observed that the amount of compensation of Rs. 2,85,000/- granted by the Tribunal is inadequate for the overall requirement of the injured for the rest of his life and therefore, the compensation was enhanced to Rs. 6,00,000/-.

11. The learned Counsel also relied on another decision in R.D. Hattangadi v. Pest Control (India) Pvt. Ltd. and Ors. : [1995]1SCR75 wherein the Supreme Court held as follows:

While fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those, which the victim has actually incurred

and which is capable of being calculated in terms of money; whereas non-pecuniary damages are those, which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include: (i) damages for mental and physical shock, pain suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e., on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.

The Supreme Court further observed that the Tribunal has to take into consideration the special circumstances of the claimant including his age, the unusual deprivation he has suffered and the effect thereof on his future life.

12. In the case, covered by the above decision, the claimant was an advocate with good practice, became crippled and compelled to move on wheel chair due to the disability suffered by him, therefore, the Supreme Court awarded Rs. 1,50,000/- in respect of loss of amenities of life.

13. In the case on hand, it is an undisputed fact that the claimant received injuries in the accident and he was in the hospital for about two months. The both legs were paralyzed and he was not in a position to sit or stand.

14. The evidence adduced on the side of the claimant discloses that the claimant was being taken to the bathroom to answer calls of nature. Since the claimant was only 15 years old as on the date of accident and as the Doctor stated that he would suffer permanently on account of paralisation of legs, it is essential to enhance the compensation under the heads, extra nourishment, pain and suffering and loss of amenities. Since the loss of future earnings was assessed by the Tribunal by relying on a formula, I do not find any ground to enhance the compensation towards loss of earnings.

15. So far as the medical expenses and extra nourishment are concerned, though the claimant did not produce any bills, he might have incurred some expenditure towards medical expenses and spent some amount for extra nourishment. Therefore, I am inclined to grant Rs. 25,000/- towards compensation under this head instead of Rs. 5,000/- awarded by the Tribunal. The compensation of Rs. 11,000/- was awarded towards pain and suffering, but on account of paralisation of legs, the claimant might have undergone mental agony and might have experienced so much pain. Therefore, the amount granted by the Tribunal is not sufficient and I am inclined to grant Rs. 25,000/- under this head, instead of Rs. 11,000/- awarded by the Tribunal. The amount of Rs. 10,000/- granted towards compensation for loss of amenities is also on lower side. By taking into consideration the principle laid down by the Supreme Court, I am inclined to grant Rs. 1,50,000/- towards compensation for loss of amenities forever, instead of Rs. 10,000/- awarded by the Tribunal. The claimant is, therefore, granted Rs. 1,74,000/- under various heads in addition to the amount of Rs. 2,51,000/- awarded by the Tribunal.

16. In the result, the Civil Miscellaneous Appeal is allowed in part. The compensation of Rs. 2,51,000/- awarded by the Tribunal is enhanced to Rs. 4,25,000/-. The respondents are jointly and severally liable to pay the said amount. The claimant is entitled to interest at the rate of 7.5% on the enhanced amount from the date of appeal till the date of realization with proportionate costs.

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