

HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

M.A.C.M.A.No.103 of 2006

JUDGMENT:

The second respondent, United India Insurance Company Limited, in O.P.No.2582 of 2002 is the present appellant. Aggrieved by the order dated 08.08.2005 in O.P.No.2582 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal –cum- XIV Additional Chief Judge, City Civil Court (Fast Track Court), Hyderabad, whereby and whereunder a sum of Rs.1,01,000/- was granted as compensation for the injuries sustained by the petitioner, who is the first respondent herein, the instant appeal is preferred, more particularly, challenging the amount of Rs.75,000/- granted towards partial permanent disability.

For convenience sake, the parties hereinafter referred to as they were arrayed before the Tribunal in the O.P.

Facts, in brief, are that, on 17.09.2002, the petitioner travelled in a lorry bearing No.AIH 437 as a labourer for loading and unloading sand. The sand was loaded in Vazidnagar, and the lorry was returning to Narayankand, when it reached Magi gate at 11.30 p.m, due to the rash and negligent driving of the lorry driver, it turned upside down resulting injuries to him. He was shifted to Osmania General Hospital. The concerned police also registered a case in Crime No.104 of 2002 against the driver under Section 338 IPC. The petitioner claiming that, he sustained compound comminuted fracture of both bones of left fore-arm, lower 1/3rd and loss of flesh of the left fore-arm and, he was 35 years old, earning Rs.4,000/- per month as a labourer –cum-washer-man, sought compensation of Rs.2,50,000/-, under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), against respondent Nos.1 and 2, who are the owner and insurer of lorry respectively.

The first respondent filed counter opposing the claim, however, contending that, since the vehicle was insured with the second respondent, it is liable to pay compensation.

The second respondent filed counter opposing the claim.

The Tribunal framed three issues about the responsibility for the accident. During enquiry, the petitioner examined himself as PW.1 and marked Exs.A.1 to A.7. On behalf of the respondents, no witnesses were examined, but a copy of the insurance policy was marked as Ex.B.1. The second respondent – Insurance Company also obtained permission from the Tribunal under Section 170 of the Act to plead defences available to the owner, in case the owner remained *ex parte*.

On issue No.1, the Tribunal, having taken note of the suggestion made to PW.1 by the learned counsel for the second respondent that he was travelling as a gratuitous passenger in the said lorry, but, confined to the extent of negligence on the part of the driver of the lorry for taking place of the accident, held in favour of the petitioner.

On issue No.2, the Tribunal has granted Rs.10,000/- towards pain and suffering; Rs.10,000/- towards temporary loss of earnings; Rs.1,000/- towards transportation to the Hospital; Rs.5,000/- towards medical expenses, though, there was no evidence on record; Rs.75,000/- towards 25% partial permanent disability; and, thus, granted a sum of Rs.1,01,000/- with interest at 7.5% p.a.

The aforesaid order which is under challenge by the Insurance Company contending, in grounds of appeal, that the risk of the persons, being carried in a goods vehicle, is not required to be covered under the provisions of the Act, that the petitioner was travelling as a passenger, and not as a labourer, which the Tribunal did not take notice of, that the Tribunal was wrong in determining the compensation calculating the disability without recording any evidence of the doctor and, therefore, sought to set aside the order and decree under appeal.

Heard Sri E.Venugopal Reddy, learned Counsel for the appellant, and Sri Kota Subba Rao, learned Counsel for the first respondent. Despite service of notice on second respondent, owner of the vehicle, none appears for him.

Learned counsel for the appellant raised two fold contentions, first, that the petitioner was a gratuitous passenger travelling in the goods vehicle at the relevant time; second, that the Tribunal was not correct in granting Rs.75,000/- towards partial permanent disability in the absence of evidence of medical

officer who has issued Ex.A.6; and, therefore, sought to set aside the order.

Learned counsel for the first respondent contends that no factual foundation was laid in the pleadings as to the petitioner travelling in the lorry as a passenger and, therefore, that ground is not available to the appellant herein. Concerning the second contention, it is the submission of the learned counsel for the first respondent, it is true that the doctor was not examined, but, the petitioner sustaining a grievous injury, that being, Grade I compound comminuted fracture of both bones of left fore-arm, is evidenced by Ex.A.3, discharge card issued by Osmania General Hospital, and there cannot be any reason to disbelieve Ex.A.3.

Perused the order and evidence on record, including the pleadings. A careful perusal of the counter filed by the second respondent reveals that the appellant has not taken any plea in regard to the petitioner travelling in the goods vehicle as a passenger. Thus, for the first time, as reflected, in discussion, in paragraph '8', in the cross-examination of PW.1, it was raised by way of suggestion to PW.1 that he was only a gratuitous passenger which was denied by him. Therefore, that ground would not sustain.

Concerning the second contention that the doctor was not examined, granting Rs.75,000/- towards partial permanent disability in the absence of medical evidence, it is true that Ex.A.6 issued by the medical officer, which is termed as Certificate of Orthopaedically handicapped, cannot be said to be proved in the absence of the evidence of the doctor who has issued Ex.A.6 making himself available for cross-examination by the Insurance Company. In that view of the matter, the finding recorded by the Tribunal granting Rs.75,000/-, that too, without following the structural formula cannot be maintained.

Now, coming to the nature of injuries sustained by the petitioner, Ex.A.3 would reflect that the petitioner was admitted in Osmania General Hospital on 21.09.2002, and discharged on 01.10.2002. Thus, he was treated as an inpatient for ten days for Grade I compound comminuted fracture of both bones of left fore-arm. This apart, it is forthcoming from Ex.A.4, and the opinion of the doctor, Sri G.Sridhar, Consultant Radiologist, that there was an old healed fracture of lower third thigh of shaft of radius and ulna. When, kept in view, the nature of injury sustained by the petitioner, certainly, he is entitled to a sum of

Rs.35,000/- towards the injury and pain and suffering as against Rs.75,000/- granted by the Tribunal. Loss of earnings awarded by the Tribunal at Rs.10,000/- is maintained. The Tribunal has granted Rs.1,000/- towards transportation charges, and it is enhanced to Rs.2,000/-, as claimed by the petitioner. Tribunal has granted a sum of Rs.5,000/- towards extra nourishment and medical expenses. It is no doubt true that the petitioner has undergone treatment in Osmania General Hospital, but, keeping in view, the nature of injury, the said amount is enhanced to Rs.10,000/-. Thus, the petitioner is totally entitled to Rs.57,000/-, as against Rs.1,01,000/- granted by the Tribunal, with interest at 7.5% p.a. from the date of petition till realization.

The Appeal is, thus, allowed. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand disposed of.

A.SHANKAR NARAYANA,J

Date: 01.04.2015

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