

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

MACMA. No.89 OF 2008

JUDGMENT:

The instant appeal is preferred by the New India Assurance Company Limited aggrieved of the amount of Rs.1,17,000/- granted as compensation by the order, dated 20.08.2007, in O.P.No.634 of 2005 on the file of the Chairman, Motor Accidents Claims Tribunal - cum - IV Additional District Judge (FTC), Ranga Reddy District (for short 'Tribunal), on the ground that the Tribunal despite making certain positive observations that there was no medical evidence to prove the amounts mentioned in the medical bills, still, granted certain amounts towards medical expenses, as against the claim for Rs.3,00,000/- laid under Section 166 of the Motor Vehicles Act.

2 . The appellant herein, which is insurer of the lorry bearing registration No. AP 29T 4456, is respondent No.2, while respondent No.1 herein is the petitioner - claimant and respondent No.2-owner of the lorry is the 1st respondent in O.P. before the Tribunal.

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

4. The facts, in brief, are that on 27.01.2005 at about 08.00 A.M, while the petitioner was proceeding on his scooter from Haridwar Hotel towards Sultan Bazar, a lorry bearing registration No. AP 29 T 4456, driven by its driver at high speed in a rash and negligent manner, dashed him from behind, as a result of which, he fell down and sustained injuries, later he was shifted to Aditya

Hospital and taken treatment for second spell in Dr.Ashok Kumar's Hospital and spent various amounts. Therefore, the petitioner sought compensation of Rs.3,00,000/- against respondents 1 and 2, who are owner and insurer of the lorry respectively.

5. The 1st respondent remained ex-parte. The 2nd respondent-insurance company opposed the claim of the petitioner by filing counter raising various pleas and also filed I.A.No.565 of 2007 under Section 170 of the M.V.Act to take all the defences available to the owner of the vehicle and the same was allowed by the Tribunal on 31.07.2007.

6 .The Tribunal, based on the said pleadings framed three issues in the direction of fixing responsibility for the accident. During enquiry, petitioner himself was examined as PW.1, T.Pandu Ranga Reddy, Proprietor of Sri Venkateshwara Electrical Stores, under whom the petitioner was working, examined as PW.2 and the doctor, who treated the petitioner, was examined as PW.3 and marked Exs.A-1 to A-10 as regards his entitlement for the amount claimed. On behalf of respondent No.2, no witnesses were examined, but Ex.B.1 – copy of policy was marked.

7. Having perused the record, the Tribunal held issue No.1 in favour of the petitioner and, on issue No.2, the Tribunal by elaborately discussing the evidence of PWs.1 and 3, awarded a sum of Rs.10,000/- towards temporary loss of earnings, Rs.2,000/- towards transportation charges as against Rs.3,000/-, Rs.75,000/- towards medical and nursing charges based on Ex.A.4 and also by taking into consideration Ex.A.6 and the evidence of PW.3, Rs.5,000/- towards future medical expenses as against Rs.20,000/- claimed, Rs.10,000/- towards pain and suffering as against Rs.30,000/- and Rs.15,000/- towards continuing permanent disability

as against Rs.70,000/- claimed, but refused to grant Rs.1,000/- towards damage to clothes, and thus, a total sum of Rs.1,17,000/- was granted with interest at 7.5% per annum and also held that the respondents are jointly and severally liable to pay the compensation to the petitioner.

8 . The aforesaid order is under challenge by the insurer contending that the Tribunal did not properly appreciate the evidence since despite recording the finding that Ex.A.6 was not proved, granting Rs.75,000/- is without any basis and also Rs.15,000/- towards continuing permanent disability, despite holding that there is no medical evidence to show that the petitioner sustained partial permanent disability and, therefore, sought to set aside the order of the Tribunal.

9. Heard Sri B.Devanand, learned counsel for the appellant. No representation on behalf of the 1st respondent. It was endorsed in the grounds of appeal that the 2nd respondent is not necessary party.

10 . Now, the short point that arises for consideration is - whether the amounts Rs.75,000/- and Rs.15,000/- granted by the Tribunal towards medical expenses and continuing permanent disability respectively are contrary to the evidence recorded by the Tribunal and cannot be sustained?

-

POINT:

11. There is no need to probe into other aspects of the case. The Tribunal has dealt with in paragraph 8(iv) of the order, assigning reason as to why it was granting Rs.75,000/-. It is no doubt true, the Tribunal while observing that PW3 is not a competent witness to

prove Ex.A.6-bill amount, as he was only consultant surgeon and not the owner of the hospitals i.e. Aditya Hospital and Dr. Ashok Kumar's Hospital, since plastic surgery was conducted in Ashok Kumar's Hospital, whereas other part of the treatment was undergone at Aditya Hospital, but, however, considering the nature of injury received by the petitioner and the treatment undergone by him, his advanced age and other health problems since he has been suffering from diabetes, held that granting Rs.75,000/- is just and reasonable and, thereby, granted the same.

12. Perused the evidence of PW.3. It is no doubt true that he is a consultant surgeon, but the Tribunal held that he was not the owner of the hospitals i.e. Aditya Hospital and Dr. Ashok Kumar's Hospital and, therefore, the bill amount under Ex.A.6 was not proved. The very fact that the surgical intervention was for the crush injury sustained by the petitioner and later for further treatment, he was sent to Dr.Ashok Kumar's Hospital and plastic surgery was undertaken, as spoken to by PW.2, granting of Rs.75,000/- towards medical expenses cannot be faulted, since Ex.A.6, which is final bill issued by PW.3, shows the amount as Rs.64,577/- and in the discharge bill Rs.16,000/- was shown, issued from Dr. Ashok Kumar's Hospital, and the surgeon, who treated the petitioner, collected Rs.7,500/- from Dr Ashok Kumar's Hospital. Therefore, viewed from any angle, the petitioner is entitled to Rs.75,000/- towards medical bills and treatment.

13. So far as the other amount of Rs.15,000/- granted towards continuing disability is concerned, the Tribunal did not find any partial and permanent disability, but assigned the reason in granting Rs.15,000/- stating that the petitioner was 59 years old and there was every possibility for reduction in his efficiency in attending to his work in eking out his livelihood and, thus, in its view, the injuries sustained by the petitioner in the accident would increase the percentage of deterioration. That observation now recorded by the Tribunal cannot

be faulted with since it is justified with the above reasoning which has to be considered as cogent reason and, therefore, the amount of Rs.15,000/- granted by the Tribunal to the petitioner, though, cannot be construed as continuing permanent disability, but the petitioner has to suffer with it rest of his life as can be gathered from Exs.A.3, A8 and A9, which are negatives and positive photographs respectively. Therefore, no merit is to be found in the instant appeal.

14. Hence, the Appeal is dismissed. There shall be no order as to costs.

15. As a sequel, Miscellaneous Applications, if any, pending stand disposed of.

A. SHANKAR NARAYANA, J

February, 23, 2015.

kvrn

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

-

-

-

-

-

-

-
-
-
-
-
-

DATE: 23.02.2015