

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.711 of 2006

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JUDGMENT

The instant appeal is preferred by the petitioner dissatisfied with the award of Rs.90,000/- as compensation for the injuries he sustained in a road accident as against the claim of Rs.2,50,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

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

3. The facts, in brief, are that on 07.05.2003, when the petitioner was travelling in an Ambassador Car bearing No.GJ-3/C-9993 and when reached within the limits of Kaveli Village, a lorry bearing No.AP-11/T-7888, which came in opposite direction, driven at high speed in a rash and negligent manner, dashed the car, with regard to which, he sustained grievous injuries. According to him, the Station House Officer, Kohir Police Station, registered a case in Cr.No.48 of 2003 under Sections 338 and 304-A IPC against the driver of the lorry. The petitioner was immediately shifted to Government Hospital, Zaheerabad, from there referred to NIMS, Hyderabad, where he has undergone treatment. He claims that even on the date of filing the instant appeal, he was suffering with disability and undergoing treatment and he was working as JCB Operator earning Rs.9,000/-per month including batta and his wife and children including parents, sister and brothers are dependants on him. Hence, he sought to award the said amount.

4. The first respondent-owner of the lorry remained *ex parte*. The second

respondent-Insurance Company opposed the claim. It has also pleaded that the owner and insurer of the car, in which the petitioner was travelling, are necessary parties and in their absence, the claim made by the petitioner is bad. Hence, he sought to dismiss the claim petition.

5. The Tribunal, basing on the pleadings, framed three issues fixing the responsibility for the accident. During enquiry, the petitioner examined himself as P.W.1 besides examining Dr. M. Vishnuvardhan Reddy as P.W.2 and marked Exs.A1 to A15 to substantiate his claim for compensation. On behalf of the second respondent, no witnesses were examined, but the copy of insurance policy was marked as Ex.B1 on consent.

6. The Tribunal, on overall assessment of the evidence of P.W.1 supported by the contents of Exs.A1,A2 and A4, which are the certified copies of FIR, charge sheet and MVI Report respectively, held that the accident occurred due to rash and negligent driving of the lorry driver and accordingly, held issue No.1 in favour of the petitioner.

7. On issue No.2, the Tribunal, referring to the evidence of P.W.1 that he has undergone treatment in Government Hospital, Zaheerabad, from there he was referred to Gandhi Hospital, Secunderabad, where he was treated as an inpatient for one day and shifted to Remedy hospital for four days and later, taken to NIMS Hospital, where he has undergone treatment as inpatient for 15 days and he has taken further treatment in other local hospitals i.e., Sri Sai Hospital and MNR Hospital, Zaheerabad and having found that none of the doctors connected with Exs.A5 to A8 and Exs.A12 and A13 were examined to prove the contents thereof, excluded from the purview of consideration in determining the compensation. Referring to the evidence of P.W.2, Dr. M. Vishnuvardhan Reddy, and finding that three fractures were sustained by the petitioner, the first fracture is shaft of left humerus and other two fractures are shaft of radius and ulna of left forearm and shaft of right clavicle bone and even referring to surgical intervention undergone by the petitioner by fixation of insertion of rod to the left humerus and since, no disability certificate is

forthcoming despite P.W.2 assessing 15 to 20% partial and permanent disability on account of the injuries sustained by P.W.1, which of course, was not considered by the Tribunal in the absence of disability certificate issued by P.W.2 by assessing the said percentage of disability, but, however, granted Rs.45,000/- for the three fractures; Rs.36,000/- towards medical expenses and Rs.9,000/-towards other expenses i.e., extra-nourishment, transportation etc., thus, a total sum of Rs.90,000/-was granted with interest at 7.5% per annum while observing that any amount paid towards 'No fault liability' under Section 140 of the Act, the same shall be deducted from the compensation amount granted by the Tribunal.

8. It is the aforementioned order with which the petitioner did not satisfy himself and seeking to enhance the compensation, preferred the instant appeal contending in the grounds, that the Tribunal has not properly appreciated the evidence of P.Ws.1 and 2, despite the fact that there is no rebuttal evidence from the second respondent and the Tribunal was not right in discarding the disability assessed by P.W.2 and assessed in his evidence. It is also stated that the Tribunal having observed that the appellant underwent treatment in various hospitals and incurred huge amount, but, somehow, granted only Rs.36,000/- without granting the amounts paid for the treatment undergone at NIMS Hospital. Hence, he sought to grant the balance amount.

9. Heard Sri K. Raji Reddy, learned counsel for the appellant and Sri N.S.Bhaskar Rao, learned Standing Counsel for the second respondent-insurance company. Despite service of notice, none appears for the first respondent-owner of the vehicle, however, he remained *ex parte* before the Tribunal and suffered decree.

10. P.W.2 is an Orthopaedic Surgeon in Sri Sai Hospital. According to him, the petitioner was treated for fracture injury in Nizam's Institute of Medical Sciences at Hyderabad and when the petitioner approached him, he was admitted in his hospital (P.W.2's) on 14.06.2003 and discharged on 05.07.2003 and he has charged Rs.36,000/-covered by Exs.A9 and A10 towards medical

expenses. During the said period, he referred to the treatment previously undergone by the petitioner at Gandhi Hospital, NIMS Hospital and Remedy Hospital referring to the documentary evidence. He stated in his chief examination that the petitioner was suffering from dislocation of right elbow, which is permanent. He states that unless and until rod is removed the petitioner will not have full range of movement at the left shoulder and thus, assessed 15 to 20% disability. Thorough scanning of the cross-examination of P.W.2 would reveal that nothing is brought out to reject his evidence, and that, that was the reason, the Tribunal accepted his evidence and granted Rs.36,000/- under Exs.A9 to A11. Since P.W.2 asserted that he does not have any knowledge in regard to the bills covered by Exs.A12 to A14, the amount covered by those bills was rejected by the Tribunal. The documentary evidence under Exs.A6 to A8 would show that they were issued from NIMS Hospital. Though, the Tribunal found that a sum of Rs.31,064/- covered by Ex.A8, which is bunch of medical bills numbering 23 together with the prescription issued from NIMS, it was not proper on its part to reject the said amount on the mere ground of non-examination of the Medical Officer from NIMS to prove the said bills. It is not an observation of the Tribunal that the said bills were created by the petitioner. In such an event, the petitioner is entitled to the amount covered by Ex.A8 for Rs.31,064/-, which was discarded by the Tribunal. The amount covered by other bills are concerned, in the absence of examining any person from NMR Hospital, it is difficult to grant amount and the Tribunal was right in rejecting it for non-examination of either the Doctor or the concerned person, who issued it from the local hospital.

11. The Tribunal has granted Rs.45,000/-towards fractures. Keeping in view, the nature of injury and the sufferance he has undergone as seen from the treatment he has taken including the surgical interventions, certainly, the amount of Rs.45,000/-, is on lower side. Therefore, the same is enhanced to Rs.75,000/-. The Tribunal has granted Rs.9,000/- towards other expenses, such as extra-nourishment and transportation, which appears to be not reasonable and, keeping in view, the treatment undergone by the petitioner in various hospitals in different places, the petitioner is entitled to a sum of Rs.10,000/-towards extra-nourishment and also entitled to a sum of Rs.10,000/-

towards transport and attendant charges. The Tribunal has rightly discarded the permanent disability by assigning cogent reasons. Therefore, that finding recorded by the Tribunal is not disturbed. Thus, the petitioner is totally entitled to Rs.1,62,000/- as against Rs.90,000/-granted by the Tribunal. The interest granted by the Tribunal at 7.5% per annum is maintained.

12. Accordingly, the appeal is allowed in part modifying the award passed by the Tribunal, by enhancing the compensation and maintaining the rate of interest at 7.5% per annum as indicated above. There shall be no order as to costs.

13. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal stand disposed of.

A. SHANKAR NARAYANA, J

13th April, 2015

sj