

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

M.A.C.M.A.NO.1796 OF 2005

JUDGMENT:

This appeal is preferred by the appellant-petitioner against the order, dated 24-08-2004 in O.P.No.327 of 2001 on the file of the I Additional District Judge-cum-Motor Accident Claims Tribunal, East Godavari, Rajahmundry (for short 'the Tribunal') seeking enhancement of compensation.

2. The appellant herein is the petitioner, whereas the respondents herein are the respondents before the Tribunal.

3. For the sake of convenience, the parties herein after will be referred to as they were arrayed before the Tribunal.

4. Petitioner filed the above O.P. claiming compensation of Rs.2,00,000/- for the injuries sustained by him in the accident that occurred on 12-02-2001 at about 4.30 P.M., near Devi theatre on the main road in Alamuru. It is alleged in the petition that he was aged 22 years at the time of accident and was earning Rs.1,500/- per month as lorry cleaner. On the date of accident, when he was proceeding to his house on a cycle from Alamuru and by the time he reached near Devi theatre on the main road in Alamuru, lorry bearing registration No. AAK 347 driven by the 1st respondent came in a rash and negligent manner and dashed against him, as a result of which, he received injuries and he was initially admitted in Government General Hospital, Alamuru for treatment and later on, he was shifted to Government General Hospital, Kakinada for treatment. As the condition of the petitioner was serious, he was again shifted to Suraksha Emergency Hospital, Rajahmundry for expert's treatment. He was in hospital from 18-02-2001 to 23-02-2001 and spent Rs.35,000/- for treatment. Hence, the claim petition.

5. The petition against the 1st respondent was dismissed as not pressed and the 2nd respondent remained ex-parte. 3rd respondent-Insurance Company filed counter denying the averments in the petition and stated that the burden is

on the petitioner to establish that the accident was occurred due to rash and negligent driving of the 1st respondent and the 1st respondent had valid driving licence at the time of accident and the petitioner sustained grievous injuries. The compensation claimed by the petitioner under various heads is excessive. The liability, if any, on the 3rd respondent, it is limited as per the provisions of the Motor Vehicles Act and also as per the terms and conditions of the policy in force. The petitioner is not entitled to claim interest from the date of petition and he is entitled for interest from the date of award. Therefore, it prays to dismiss the petition.

6. Basing on the above pleadings, the following issues were settled for trial:

1. Whether the petitioner sustained injuries in the motor vehicle accident that took place on 12-02-2001 due to rash and negligent driving of the lorry No. AAK 347 by its driver, 1st respondent?

2. Whether the petitioner is entitled to compensation and if so, to what amount and from whom?

3. To what relief?

7. The petitioner himself was examined as P.W.1 and the doctor who treated him in Suraksha Emergency Hospital, Rajahmundry, was examined as P.W.2 and Exs.A1 to A8 and Ex.C1 were got marked. On behalf of the 3rd respondent, no oral evidence was adduced except marking Ex.B1-Insurance policy.

8. The Tribunal after considering the evidence on record, held that the accident occurred due to rash and negligent driving of the lorry bearing registration No. AAK 347 by its driver. The Tribunal without giving a categorical finding with regard to injuries sustained by the petitioner, however, accepted the monthly income of the petitioner at Rs.1500/-. After deducting one third thereof and by applying multiplier 16 and by taking into consideration 30% permanent disability as opined by P.W.2, awarded an amount of Rs.57,600/-. Besides the said amount, an amount of Rs.20,000/- for medicines and treatment, Rs.10,000/- for pain and suffering, Rs.10,000/- for loss of amenities of life, Rs.5,000/- for extra nourishment and Rs.1,000/- for transportation to various hospitals, were awarded. Thus, in total, the Tribunal awarded an amount of Rs.1,03,600/- with interest at 9% p.a., from the date of petition till the

date of deposit vide impugned order. Not satisfied with the said compensation amount, the present appeal is preferred by the petitioner for enhancement of compensation.

9. I have carefully perused the injuries sustained by the petitioner as per Ex.A7 issued by Superintendent, Government General Hospital, Kakinada, dated 12-02-2001, at the time of admission. It discloses the following injuries:

1.Laceration over the side of scalp (over frontal bone) 2" x 1 cm X1/2 cm

2.Abrasion over left handible 1 ½" x 1"

3.Swelling around left writ joint (contusion) 2" x 2"

10. Though the petitioner was admitted on 13-02-2001, he was found absconding at 9.00 A.M. on 17-02-2001 as per staff nurse. P.W.2 is a private doctor who is a consultant General surgeon in Suraksha Emergency Hospital, Rajahmundry. He deposed with regard to Ex.C1. The injuries mentioned in Ex.A7 have to be believed as they were initially observed at the time of admission in the Government General Hospital, Kakinada. The petitioner was in the hospital for four days. After absconding from the Government General Hospital, he appears to have been admitted in Suraksha Emergency Hospital, Rajahmundry. P.W.2 was a General Surgeon at Krishna Poly Clinic and consultant General Surgeon at Suraksha Emergency Hospital, Rajahmundry since 2000. As per his evidence, at the time of admission, the patient was conscious, coherent and moving all four limbs. There is no focal neurological deficit. He opined that the petitioner suffered 30 to 35% permanent disability. His evidence cannot be believed. However, the same was taken into consideration by the Tribunal and awarded compensation. In view of nature of injuries sustained by the petitioner and admission in Government General Hospital, Kakinada where he was inpatient for four days, I am of the opinion that the compensation amount of Rs.1,03,600/- awarded by the Tribunal is just and proper and absolutely, there are no grounds to interfere with the same.

11. Accordingly, the appeal is dismissed confirming the award, dated 24-08-2004 in O.P.No.327 of 2001 passed by the Tribunal. No order as to costs. Miscellaneous petitions, if any pending in this appeal shall stand closed.

A.RAMALINGESWARA RAO, J

DATED: 25-11-2015

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