

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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M.A.C.M.A.No.2086 of 2005

JUDGMENT:

The instant appeal is preferred seeking enhancement of compensation by the petitioner, dissatisfied with the amount of Rs.5,000/- granted by the order dated 21.02.2005 in O.P.No.229 of 2000 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-IV Additional District Judge (FTC), Nizamabad (for short, 'the Tribunal') as against the claim of Rs.2,00,000/- laid under Section 166(1)(a) of the Motor Vehicles Act, 1988 (for short, 'the Act') read with Rule 455 of APMV Rules framed thereunder.

2. The appellant herein is the petitioner, while the respondent Nos.1 and 2, who are the owner and insurer of the auto bearing No.AP-25-T-7935 respectively, were respondents in the original petition.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts in brief are that on 20.12.1999, while the petitioner was travelling in an auto bearing No.AP-25-T-7935 from Dichpally station towards Nizamabad side and at about 02.00 PM, when it reached Tulja Bhavani Rice Mill, Bardipur Village, Shivar on Dichpally to Nizamabad road, since the driver of the auto drove it in a rash and negligent manner and at high speed and unable to control the speed of the vehicle, it turned upside down, due to which, the petitioner came under the auto and received fracture of pelvic bone, right clavicle, right shoulder and other parts of his person. He was immediately shifted to Government Headquarters Hospital, Nizamabad. He claims that he had spent Rs.80,000/- towards medical expenses and even spending on the date of filing of instant petition before the Tribunal. He also claims that he is a photographer-cum-agriculturist earning Rs.6,000/- per month, but he is unable to pursue his occupation on account of injuries he sustained in

the accident and became permanently disabled. Therefore, he calculated Rs.12,60,000/- as compensation and shown damages which were shown in Para '2' of the order under challenge, but, however, he restricted his claim to Rs.2,00,000/- under various heads.

5. The 1st respondent-owner of the vehicle, though, filed counter, however, claimed that since the vehicle was insured with 2nd respondent-insurance company, the 2nd respondent is obligated to indemnify and, therefore, the 2nd respondent is liable to pay compensation. The 2nd respondent-Insurance Company opposed the claim by raising various pleas and requested to dismiss the claim.

6. Basing on the above pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry, the petitioner himself was examined as P.W.1 besides examining Dr. T.Narsing Rao as PW.2 and marked Exs.C.1 and C.2 besides marking Exs.A.1 to A.6. On behalf of the respondents, no witnesses were examined and no documents were marked.

7. On issue No.1, the Tribunal on appreciation of evidence on record held that due to rash and negligent driving of the auto driver, the accident had occurred resulting in injuries to the petitioner. On issue No.2, while dealing elaborately with the contents of Exs.A.2, A.3 and A.5 and the evidence of PW.2 by observing that when summons were issued to the Government Headquarters Hospital, Nizamabad to produce the case sheet of the petitioner, a reply was given that the case sheet was misplaced and was not traced out. But, however, the Tribunal by observing that it has come from the custody of PW.2 and that Exs.A.2, A.3 and A.5 were false and fabricated as they were inconsistent with one another, even, directed the office to send the copy of the order under challenge to CB CID, as the Department already filed request to produce the documents given by PW.2-Dr. T.Narsing Rao and Dr. L.Ramulu and, thus, by disbelieving the evidence of PW.2, Exs.A.2, A.3 and A.5 and also Ex.A.1 as it contains corrections, granted a total sum of Rs.5,000/-

towards compensation with interest @ 9% per annum.

8. Aggrieved of the said order, the instant appeal is preferred contending in the grounds of appeal that the Tribunal did not properly appreciate the evidence let in by the petitioner and, hence, sought to grant balance amount.

9. Heard Sri P. Radhive Reddy, learned counsel for the appellant, Sri Nisaruddin Ahmed Jeddy, learned counsel for the 2nd respondent. No representation for the 1st respondent.

10. At the outset, it is to be stated that serious comments have been made by the Tribunal against Dr. T.Narsing Rao on his conduct and recorded definite finding that Exs.A.2, A.3 and A.5 were false and fabricated as the description of injuries shown in all these documents were inconsistent with one another. In arriving at that finding, the Tribunal has given cogent reasons in Para's 19 and 20, which observation would suffice to hold that there is absolutely no merit in the appeal and the appeal is liable to be dismissed. Para's 19 and 20 are as follows:

"19. In this case Exs.A.2 and A.3 issued by the same Doctor PW.2 but the injuries mentioned in Ex.A.2 is not at all corroborating with the injuries mentioned in Ex.A.3. The injuries mentioned in Ex.A.5-case sheet is clearly evidence it is a created one and all the columns was struck off and re-written and X-ray numbers were also not tallied with the Ex.C.3. It shows how PW.2 is issuing the wound certificates and O.P. chits and disability certificate including the case sheet in Nizamabad town to help the petitioners, as already held that the injuries mentioned in Exs.A.2 & A.5 is not all corroborated with the injuries mentioned in Ex.A.3 it was issued by the same doctor and on the basis of Exs.A.2 & A.3 the PW.2 issued Ex.A.6-disability certificate. In view of the directions of the Hon'ble High Court and the other contradictions between Exs.A.2 & A.3 the wound certificate and disability certificate issued by PW.2 is not believed. The petitioner has not proved his case that he sustained fracture of both pelvis, right clavicle bone, right shoulder, urinal bladder blast, injuries to both legs and injuries other parts of the body.

20. It is already mentioned that the injuries mentioned in

Ex.A.2 is not corroborating with the injuries mentioned in Ex.A.3 which was issued by the same doctor the petitioner has suppressed the original fact of sustaining gravity of inconsistency in issuing the wound certificate clearly shows how the PW.2 is issuing wound certificates and disability certificates to help the petitioner. These documents should be brought into the notice to CB CID to take proper action against the PW.2. A copy of this judgment has to be marked to CB CID which were already filed requisition before the Court to produce the documents which was given by the PW.2 Dr.T.Narsing Rao and Dr.L.Ramulu notices by the Court falsely.”

11. In such event, certainly, the documentary evidence let in by the petitioner cannot be accepted and acted upon and therefore, the appeal is dismissed. There shall be no order as to costs.

12. As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

Date: 10.02.2015.

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