

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.1679 OF 2006

And

Cross-objections (SR) No.34055 of 2006

JUDGMENT:

The instant appeal is preferred by the second respondent aggrieved by the quantum of compensation granted by the Tribunal of Rs.1,82,000/- by order dated 13.07.2005 in M.A.T.O.P.No.189 of 2001 on the file of Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge(FTC-I) at Khammam, against the claim of Rs.3,00,000/-. Cross-objections have been preferred seeking enhancement on the ground that the meagre compensation was granted despite the claim being Rs.3,00,000/- laid under Section 166 of the Motor Vehicles Act read with Rule 74(1)(b) of Motor Vehicles Rules.

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

3. The facts in brief are that on 29.07.2000 at about 10.00 a.m., the petitioner was returning from Mylaram village having collected his sales amount to Paloncha on his Yamaha Motor Cycle bearing No.AP 20 D 4618 and on the way in between Guttumalla and Mylaram villages, since the driver of A.P.S.R.T.C. bus bearing No.AP 9 Z 1240 driven it at high speed in a rash and negligent manner, dashed his motor cycle, due to which, he sustained multiple injuries. He was given first aid at Government Hospital, Kothagudem and thereafter at Yashoda Super Speciality Hospital, Malakpet, Hyderabad. He claims that he has spent Rs.75,000/- for his treatment, Rs.25,000/- towards medical expenses, Rs.20,000/- towards conveyance charges and Rs.20,000/-

towards attendant charges and, therefore, sought for Rs.3,00,000/- as compensation.

4. The first respondent remained *ex parte* before the Tribunal. Second respondent resisted the claim attributing the liability to the petitioner himself but not to the respondents and sought for dismissal of the claim.

5. The Tribunal has framed three common issues in the direction of fixing responsibility for the accident. During enquiry, the petitioner examined himself as PW.1 and also examined the doctor as PW.2 and marked Exs.A-1 to A-8 to substantiate his claim. On behalf of the respondents, no witnesses were examined and no documents were marked.

6. On issue No.1, the Tribunal while appraising the evidence adduced by the petitioner as P.W.1 supported by Exs.A1 and A2 held it in affirmative. On issue No.2, while describing the injuries contained in Ex.A3 and as stated in the evidence of P.W.2, granted various sums under relevant heads as follows:

1. Compound fracture of both bones of right leg Rs.10,000/-

2. Fracture of dislocation of elbow Rs.5,000/-

3. Fracture of Zygomatic process Rs. 5,000/-

4. Two simple injuries at the rate of Rs.1000/-

Per injury Rs.2,000/-

5. Expenditure towards treatment Rs.1,00,000/-

6. Loss of earnings Rs.30,000/-

7. Disability Rs.30,000/-

Total Rs.1,82,000/-

7. The Tribunal made an observation that the petitioner is entitled for a compensation of Rs.1,82,000/- and the petitioner has already withdrawn an amount of Rs.25,000/- under no fault liability in MATOP No.173 of 2001 and,

thus, decree was passed for a sum of Rs.1,57,000/- with interest at 7.5% per annum.

8. The aforementioned order is under challenge in the instant appeal on the ground that the amount granted by the Tribunal is high and excessive. It is also stated in ground No.4 that 'the learned Judge erred with 40% disability to that of permanent disability and granted compensation separately on each fracture apart from Rs.30,000/- on the ground of 40% disability which is not proper.' It is further stated that the Tribunal ought not to have granted Rs.1,00,000/- towards medical bills, which are fabricated as the petitioner has underwent treatment only for seven days, and, therefore, sought to set aside the judgment and award passed by the Tribunal.

9. The petitioner – cross objector contends in the grounds that the Tribunal somehow, did not properly appreciate the evidence and the percentage of disability at 40% ought to have taken and awarded Rs.3,00,000/- and, therefore, sought to grant balance amount. In fact the cross-objector specified Rs.1,43,000/- which is not granted, since the Tribunal granted Rs.82,000/- plus components of interest and costs. Hence, he filed cross-objections.

10. Heard Sri B.Mayur Reddy, standing counsel for A.P.S.R.T.C. appearing for the appellant and Sri M.Rajamalla Reddy, learned counsel for the first respondent-claimant. R2 is not a necessary party as endorsed in the grounds of appeal.

11. Perused the judgment and award, the oral and documentary evidence let in by the petitioner.

12. As seen from the order under challenge, the petitioner sustained four injuries as per Ex.A3, which are described as follows:

“1. Fracture of dislocation of right elbow with commuted fracture

radial head.

2. Compound fracture both bones U/3 right leg with ipsilateral condylar fracture.

3. Laceration wound over chin.

4. Right Black eye.”

13. Even the doctor from Yashoda Hospital, who was examined as P.W.2 described the injuries in his evidence as follows:

“1. Lat condyle fracture on right tibia to supreme of M/3, both bones of right leg.

2. Unstable flail right elbow with fracture dislocation of right elbow.

3. Fracture of radial head.

4. Fracture of coronoid process,

5. Fracture lat humeral condyle,

6. Fracture zygomatic process.”

14. Concerning expenditure towards treatment, though, Ex.A6 shows Rs.1,03,355.80 ps, the Tribunal restricted it to Rs.1,00,000/- as the claim made by the petitioner was to that extent. The Tribunal has not taken into consideration 40% disability as the petitioner failed to produce any disability certificate from medical board of Head Quarters Hospital, Khammam. Keeping in view, the arguments of the petitioner and applying the multiplier by resorting to the disability in assessing the partial and permanent disability, the petitioner was granted the amounts as shown above and Rs.30,000/- was granted towards disability, shown as Item No.7 not specifying it whether it was towards partial permanent disability or otherwise. Incidentally, it has to be construed that the disability at 40% as spoken to by P.W.2 was not taken into consideration, whereas, as per P.W.2's evidence, there have been six fractures as mentioned above, the amount of Rs.1,82,000/- granted by the Tribunal appears to be on lower side and, therefore, there is no merit in the appeal and hence the appeal has to be dismissed.

15. Adverting to the cross-objections filed by the petitioner, keeping in view, that the petitioner has undergone six fractures as per the evidence narrated above, the petitioner is entitled to Rs.10,000/- additionally for the compound fracture of both bones of right leg and Rs.5,000/- additionally for fracture of dislocation of elbow and Rs.5,000/- towards fracture of zygomatic process and for two simple injuries Rs.3,000/- each totalling Rs.6,000/- and towards extra nourishment since nothing was awarded by the Tribunal, an amount of Rs.10,000/- is awarded as there are six fractures and towards attendant charges and transportation, a sum of Rs.3,000/- is awarded as the petitioner was treated as in-patient for sixty days. Thus, the petitioner is entitled to a further sum of Rs.39,000/- in addition to the amount awarded by the Tribunal.

16. Thus, the petitioner is entitled to a total compensation of Rs.2,21,000/- as against the award of Rs.1,82,000/- granted by the Tribunal, out of which an amount of Rs.25,000/- was deducted earlier towards no fault liability and the petitioner is entitled to balance amount of Rs.1,96,000/- with interest at 7.5% per annum thereon.

17. Thus, the cross-objections are allowed in part while dismissing the appeal. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

February 12, 2015.

Rns

