

THE HON'BLE MRS JUSTICE ANIS

C.M.A.NO.2569 OF 2004

JUDGMENT:

This Civil Miscellaneous Appeal is filed against the decree and order dated 14.11.2000 passed in O.P.No.415 of 1997 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Nalgonda.

For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the Original Petition.

O.P.No.415 of 1997 is filed under Section 166 of the Motor Vehicles Act claiming compensation of Rs.1,00,000/- for the injuries sustained in the motor accident that occurred on 09.01.1996.

The averments of the petition, in brief, are that the petitioner and others went to Cherukupalem Village, Nandigama Mandal, Krishna District, to attend a funeral ceremony on 07.01.1996, stayed in the house of one Induri Appi Reddy on 08.01.1996 and at about 4 am on 09.01.1996, all of them were coming from Kodad in a jeep bearing No.AP-20-T-655. At that time, the driver of the jeep drove the same in rash and negligent manner and when the jeep reached K.M.No.143/6 a lorry came in the opposite side. In order to avoid the lorry, the driver of the jeep hit a stationed tractor bearing No.APL 9550 from behind resulting in grievous injuries to the petitioner. The petitioner was immediately shifted in the hospital by name Tata Hospital and later, he was shifted to Hyderabad Nursing Home, where he took treatment for his fractured leg. A steel rod was inserted after operation due to which the petitioner suffered lot of pain, inconvenience and discomfort. On report, the police, Chievemula, registered a case in Crime No.2 of 1996 against the driver of the jeep. The petitioner stated that prior to the accident he was a hale and healthy and earning Rs.50,000/- per year on agriculture. Therefore, respondent Nos.1 and 2 being the owners of the accident vehicle and respondent Nos.3 being the insurer

thereof, are jointly and severally liable to pay Rs.1,00,000/- to the petitioner.

The first respondent remained *ex parte* and the second respondent had not filed counter. The third respondent filed counter contending as under.

The respondent put the petitioner to prove the manner of accident, the age, income and health condition of the petitioner and the injuries sustained by him in the accident and disputed about the insurance of the jeep and finally prayed to dismiss the petition as the compensation is highly excessive and untenable.

Basing on the pleadings and to substantiate the petitioner's claim, P.Ws.1 and 2 were examined and Exs.A1 to A17 were marked on behalf of the petitioner. No oral or documentary evidence is adduced on behalf of the respondents. After perusing the oral and documentary evidence, the Tribunal granted compensation of Rs.5,000/- along with 12% interest.

Not satisfied with the compensation awarded by the Tribunal, the petitioner filed the present appeal.

Learned counsel for the appellant argued that the petitioner sustained grievous injuries but the Tribunal has not considered the same and awarded a meager compensation. Further, the Tribunal also had not granted any compensation towards medical expenses and that the petitioner took treatment in the Government Hospital initially and thereafter, he took treatment in Hyderabad Nursing Home, where P.W.2 treated him. To prove these facts, the petitioner filed medical cash bills under Exs.A9, A11 to A13 and the Tribunal has not considered the same on the ground that it is not known for which treatment the amount was charged in the bills and prayed the Court to enhance the compensation by granting compensation towards medical expenses.

On the other hand, learned Standing Counsel appearing for the Insurance Company argued that the Tribunal has rightly passed the

award and the compensation granted is just and reasonable and needs no interference. It is also argued that the petitioner could not prove Exs.A9, 11 to 13 as there was no fracture to the petitioner's left thigh and left knee and as such the doctor issued those documents not mentioning for which treatment receipts were issued and finally prayed the Court to dismiss the appeal.

Now, the points that arise for consideration are

- (1) Whether the accident was due to rash and negligent driving by the driver of the jeep bearing No.AP-20-T-655?
- (2) Whether the petitioner is entitled to enhancement in compensation and if so, to what amount?

POINT: A perusal of the record shows that on 09.01.1996, the driver of the jeep bearing No.AP-20-T-655 drove the jeep in a rash and negligent manner and dashed the stationed lorry, due to which the petitioner sustained injuries. The Tribunal after considering Exs.A1 and A2 held that the accident occurred due to the rash and negligent driving of the driver of the jeep and the said finding needs no interference.

Regarding the quantum of compensation is concerned, learned counsel for the appellant prays for grant of compensation towards medical expenses. A perusal of the record shows that in the accident, no doubt the petitioner received simple injuries and the Tribunal awarded Rs.3,000/- towards simple injuries and Rs.2,000/- towards pain and suffering. As per the evidence of P.W.1, initially he took treatment in Community Hospital, Suryapet, and thereafter, he was admitted in Hyderabad Nursing Home, where P.W.2 treated him. Admittedly, the petitioner has not received any grievous injuries, but P.W.2 in his evidence had stated that the petitioner sustained fracture to his left hip but he has not mentioned the same in Ex.A4, medical certificate dated 09.01.1996. To dispute the evidence of P.W.2, the contesting respondent has not adduced any evidence.

Considering the evidence of P.W.2, coupled with Exs.A9, A11

to 13, the appellant is entitled to compensation of Rs.10,000/- (Medical Cash bills of Rs.9,765/- + Rs.248/- + Rs.181/- = Rs.10,194/-, rounded to Rs.10,000/-) towards medical expenses. So far as the other heads are concerned, the award passed by the Tribunal needs no interference.

In the result, the appeal is partly allowed enhancing compensation from Rs.5,000/- to Rs.15,000/-. The interest on the enhanced amount of Rs.10,000/- shall be @ 7.5% per annum from the date of petition till the date of realization. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

(ANIS, J)

14th August 2015
RRB