

HON'BLE SRI JUSTICE S. RAVI KUMAR

M.A.C.M.A.No.881 of 2009

JUDGMENT :

This appeal is preferred against order dated 25.11.2008 in M.V.O.P.No.1348 of 2005 on the file of the Principal District Judge-cum-Chairman, Motor Accident Claims Tribunal, Kurnool (for short, 'Tribunal'), whereunder, Tribunal granted Rs.1,15,300/- as compensation as against the claim of Rs.3,00,000/-.

2. Brief facts leading to this appeal are as follows:

Appellant and others have boarded Auto bearing No.AP 21 E 3324 on 03.02.2005 to go to Kodumur and after crossing Venkayapalli, the driver of the auto lost control of the vehicle, as a result, it dashed a road side tree, which resulted injuries to appellant. Appellant was immediately shifted to Government General Hospital, Kurnool, where she was treated as inpatient for 23 days and due to injuries, appellant applied for medical leave and the injuries caused permanent disability, on these grounds, she prayed for compensation of Rs.3,00,000/-.

3. During enquiry, three witnesses are examined and seven documents are marked on behalf of appellant apart from Exs.X.1 to X.3, whereas one witness is examined and two documents are marked on behalf of Insurance Company. On a overall consideration of oral and documentary evidence, Tribunal granted a sum of

Rs.40,000/- towards pain and suffering, Rs.1,500/- towards incidental charges, Rs.1,000/- towards extra nourishment, Rs.20,000/- towards medicines and treatment, Rs.12,800/- towards loss of earnings and Rs.40,000/-towards loss of future amenities. Not satisfied with the quantum, appellant preferred the present appeal.

4. Heard arguments.

5. Advocate for appellant submitted that the Tribunal went wrong in awarding meager compensation of Rs.1,15,300/- though there is evidence supporting the claim of Rs.3,00,000/-. He submitted that the medical evidence and the medical bills would show that she spent Rs.84,358/- but the Tribunal granted only Rs.20,000/- and the award of the Tribunal is not correct. It is further submitted that as per the evidence of Medical Officer, appellant sustained permanent disability. But, the same was not taken into consideration by the Tribunal though Ex.A.7-disability certificate disclosed 50% of disability, but compensation is not calculated on that basis. It is further submitted that the Tribunal failed to appreciate the evidence of PWs.1 to 3 and documents Exs.A.1 to A.7 and the compensation granted is very low.

6. On the other hand, advocate for Insurance Company supported the order of the Tribunal. He submitted that as the medical bills in respect of private hospital are not supported by prescriptions, the Tribunal has not taken them into consideration and that there are

no grounds to interfere with the findings of the Tribunal.

7. Now the point that would arise for my consideration in this appeal is:

Whether the order in M.V.O.P.No.1348 of 2005 of the Chairman, Motor Accident Claims Tribunal-cum-Principal District Judge, Kurnool, is legal, proper and correct?

POINT :

8. So far as accident is concerned, there is no dispute even otherwise, the evidence of PW.1, which is supported by Ex.A.1-F.I.R. would clinchingly show that on the date of accident, appellant along with some others boarded auto bearing No.AP 21 E 3324 and that the said auto met with an accident, which resulted in injuries to appellant herein. It is also clear from the evidence of PW.1 that the accident was due to negligent driving of the auto driver, who lost control of the vehicle and dashed a road side tree. Her evidence is fully supported and corroborated with the contents of Ex.A.1-F.I.R. and there is no rebuttal evidence to disprove the testimony of PW.1. The fact that policy is in force as on the date of accident is also not in dispute.

9. The only grievance of appellant is that the Tribunal erred in granting meager amount of Rs.1,15,300/- though there is ample evidence to show that appellant is entitled for Rs.3,00,000/-. For this appellant relied on her evidence and the evidence of Medical Officer, who is examined as PW.2. From the evidence of PW.2, it is clear that appellant was admitted in the Government General

Hospital, Kurnool as inpatient and where she underwent S.H. nailing for the fracture of right femur and that she sustained fractures to supra condylar right femur, left collar bone and right patella. PW.2 further deposed that appellant was in the hospital for 23 days as inpatient. Though appellant contended that she spent huge amount towards medicines and treatment charges, she has produced bills worth of Rs.84,358/-, which is marked as Ex.A.6. The Tribunal examined these bills and observed that they are for the period of August, September and December, 2005 and 2006-2007 and that there are no supporting medical prescriptions for these bills. Admittedly, no one is examined to prove these bills, particularly, the hospital authorities, who issued these bills and the doctor who prescribed these medicines. Considering these aspects, Tribunal granted a sum of Rs.20,000/- towards medicines and treatment on a whole and I do not find any wrong in the order of the Tribunal in assessing the medical expenses.

10. The next objection of appellant is that the Tribunal has not considered the permanent disability as assessed by the Medical Officer under Ex.A-7. The Tribunal while assessing the evidence of Medical Officer-PW.2 with reference to the Ex.A.5-discharge summary observed the disability was due to negligence of the patient i.e., appellant, but not due to injuries sustained in the accident. The Tribunal also considered whether this

disability would affect the earning capacity of appellant. As seen from the material, appellant has been working as teacher and according to her evidence, she has been working even after the accident. There is no evidence to show that appellant is not getting her salary, increments and other usual allowances on account of this disability. Considering this, Tribunal held that the disability incurred by appellant would no way affects her earning capacity and on that count Ex.A.7 was not taken into consideration. I do not find any wrong appreciation of material by the Tribunal for discarding the disability. Though the percentage of disability is not taken into consideration, the Tribunal has awarded compensation towards pain and suffering, extra nourishment, incidental expenses, loss of earnings i.e., for the period she applied for medical leave and also for loss of future amenities and in total granted Rs.1,15,300/- and I do not find any wrong appreciation of facts or law by the Tribunal. For these reasons, I am of the view that the objections raised by appellant in respect of quantum granted by the Tribunal are not at all tenable and that there are no grounds to interfere with the findings of the Tribunal.

11. For these reasons, the appeal is dismissed. No costs.

12. Miscellaneous Petitions pending, if any, shall stand dismissed.

S. RAVI KUMAR, J

17th March 2015.

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