

HONOURABLE SRI JUSTICE A. RAMALINGESWARA RAO

M.A.C.M.A. No. 2035 OF 2005

DATED 9TH December, 2015

BETWEEN

G.Chandrasekhar Reddy

...Appellant

And

K.Kalimuthu and anr

...Respondents.

HONOURABLE SRI JUSTICE A. RAMALINGESWARA RAO

M.A.C.M.A. No. 2035 OF 2005

JUDGMENT:

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This appeal is preferred by the injured claimant in OP.No.792 of 2000 on the file of the Chairman, Motor Accident Claims Tribunal-cum-II Additional District Judge, Ranga Reddy District. The said OP was filed by the appellant/claimant claiming compensation of Rs.1,50,000/- on account of the injuries suffered by him in a motor vehicle accident that occurred on 22.03.2000. It was alleged in the claim petition that when the injured claimant along with his friend being pillion rider proceeding on a scooter bearing No. AP 28H 7948 from Hyderabad to Akanpally and when they reached Mukesh gardens at Sathamrao village, Shamshabad Mandal, one lorry bearing No. TN 28C 4665 being driven by its driver in rash and negligent manner came in opposite direction with high speed and dashed against the said scooter, as a result of which, the appellant/claimant and his friend fell down on the road and

sustained grievous injuries. In the said accident, the appellant/claimant suffered fracture to his right leg, injury to knee and multiple injuries on all over the body. Immediately he was shifted to Osmania General Hospital, Hyderabad, wherein he took treatment for the injuries suffered in the accident.

The second respondent-Insurance Company filed a counter affidavit before the Tribunal denying the averments made in the claim petition in general. It was stated that the compensation claimed by the claimant is excessive.

In view of the above averments, the Tribunal framed the following issues for trial.

1. Whether the accident took place on 22.3.2000 near Mukesh Gardens, Sathanrao village on account of the rash and negligence of the driver of the lorry TN 28C 4665 as claimed by the petitioner ?
2. Whether the petitioner filed OP.No.854 of 2000 on the file of the MACT/III Additional Chief Judge, CCC Court, Hyderabad claiming compensation for the same accident?
3. If so, whether the petitioner is entitled to claim the amount of compensation under this petition ?
4. To what relief ?

Before the Tribunal, the appellant/claimant was examined as P.W.1 and one Dr. S. Ramnath was examined as P.W.2 and marked Exs.A1 to A5. No oral evidence was adduced on behalf of the respondents. A copy of policy was marked as Ex.B.1 on behalf of the Insurance Company.

On a thorough evaluation of the oral and documentary evidence, the Tribunal came to the conclusion that the accident occurred due to rash and negligent driving of the lorry bearing No. TN 28 C 4665 by its driver.

With regard to award of compensation, P.W.2 deposed that the appellant/claimant suffered disability 35% to 40%. But in the cross examination, he stated that he did not treat the appellant/claimant when he was admitted in the Osmania General Hospital and that he saw the appellant/claimant only on the day when he was examined before the Court and hence the evidence of P.W.2 can be eschewed from deciding the disability suffered by the claimant. The Tribunal noticed that the appellant/claimant failed to produce any material in proof of his age and income prior to the accident. Since the claimant was involved in the accident and coupled with Ex.A.4 medical record which shows that he suffered compound fracture of both bones to right leg middle lower third, the Tribunal awarded an amount of Rs.25,000/-. Though the claimant claimed an amount of Rs.50,000/- towards medical expenses, but he failed to produce any evidence in regard thereto. Considering the medical evidence, the Tribunal awarded Rs.5000/- towards medical, hospital and attendant charges and a sum of Rs.1,000/- towards transportation charges and Rs.4000/- towards pain and suffering. Thus in all the Tribunal awarded compensation of Rs.,35,000/-.

Challenging that compensation awarded by the Tribunal is too inadequate, the appellant/claimant preferred the present appeal.

I have carefully perused the evidence on record. In view of the evidence in Ex.A.4, medical record, with regard to fracture suffered by the claimant, awarding of Rs.25,000/- by the Tribunal is proper in the facts and circumstances of the case. The appellant/claimant was in the hospital for a period of 18 days. However, nothing was awarded towards loss of earnings for the said period. In the absence of proof with regard to income of the claimant, it can be assumed that he was earning Rs.3,000/- per month as he was doing business in agricultural products. In the circumstances, an amount of Rs.1500/- should have been awarded towards loss of earnings for the period of 18 days spent in the hospital. Rs.4,000/- awarded by the Tribunal towards pain and suffering is also grossly inadequate and the same is enhanced to Rs.20,000/-. Thus the Award of the Tribunal is modified by enhancing the compensation from Rs.35,000/- to Rs.52,500/-. The enhanced compensation shall carry interest at 9% per annum from the date of filing the petition till realization.

Accordingly the appeal is partly allowed. Miscellaneous petitions pending consideration if any in the appeal shall stand closed in consequence. No order as to costs.

JUSTICE A. RAMALINGESWARA RAO

DATED 9th December, 2015.
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