

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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M.A.C.M.A. No.780 of 2006

JUDGMENT:

Dissatisfied with the amount of Rs.3,000/- granted as compensation by the order dated 15.11.2005 in M.V.O.P.No.568 of 2000 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-VII Additional District Judge, 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') and the Rules framed thereunder, for the injuries sustained by the petitioner in a road accident, the instant appeal is preferred seeking enhancement of compensation.

2. The appellant herein is the petitioner, while respondent Nos.1 and 2, who are the owner and insurer of the accident vehicle respectively, were respondents in the original petition.

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

4. The facts in brief are that on 24.09.2000 at about 9-30 p.m., while the petitioner was travelling in a jeep bearing registration No.AAR 4479, belonging to 1st respondent, from Nizamabad towards Nizamsagar side and when it reached Someshwar village, the driver of the jeep, since driven it in a rash and negligent manner at high speed, lost control over it, due to which, it turned upside down resulting in multiple injuries and fractures on his person. He was immediately admitted in Government Hospital, Banswada and then referred to Government Hospital, Nizamabad, where he was treated by Dr.L.Ramulu and Dr.T.Narsing Rao, Orthopaedic Surgeons, and his right leg was operated upon twice and rod was also inserted and later he was treated in Dr.Bhoomrao Hospital, Nizamabad. Therefore, he sought Rs.2,00,000/- from respondent Nos.1 and 2, who are the owner and insurer of the jeep respectively.

5. The 1st respondent, owner of the jeep, remained *ex parte*. The 2nd respondent opposed the claim by raising various pleas.

6. Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry, the petitioner examined himself as P.W.1 besides examining Dr.L.Ramulu as P.W.2 and marked Exs.A.1 to A.59. On behalf of the contesting 2nd respondent-Insurance Company, no witnesses were examined, but a copy of insurance policy was marked as Ex.B.1 on consent.

7. The Tribunal, on appraisal of evidence on record, both, oral and documentary, let in by the petitioner, held issue No.1 in favour of the petitioner, but however, on issue No.2, disbelieving the disability certificate issued by P.W.2 as in Ex.A.51 and basing on Ex.A.2 wound certificate issued by the Government Hospital at Bodhan and also disbelieving the evidence of P.W.2, treated the injuries sustained by the petitioner as simple and granted Rs.3,000/- as total compensation.

8. Aggrieved of the said order, the petitioner preferred the instant appeal mainly contending in the grounds of appeal that the Tribunal did not properly appreciate the evidence on record and disbelieved the disability certificate issued by P.W.2, though, it was issued by P.W.2 in his private capacity, it cannot be brushed aside, and, therefore, sought to enhance the compensation.

9. Heard Sri P.Radhive Reddy, learned counsel for the appellant-claimant, and Sri C.Prakash Reddy, learned Standing Counsel for the 2nd respondent-Insurance Company. Despite service of notice, none appears for the 1st respondent.

10. Perused the order and the evidence on record, both, oral and documentary, let in by the petitioner. The endorsement made by the Medical Officer, Government Hospital, Banswada, occurring in Ex.A.2 reads thus:

"Patient was brought to hospital on 29.4.2000 at 10-30 p.m. and examined at 10-40 p.m. He was brought by PC No.1693 PS Banswada. Patient was treated as emergency OP and because, there was suspicion of fracture and in view of excruciating pain of the patient. He was referred to Orthopaedic Surgeon at Dist.Head QTR Hospital, Nizamabad. He was admitted at Dist.Head QTR Hospital on 30-4-2000 and discharged on the same day 30-4-2000. X Ray was not taken. Adm.No. at Dist.Head QTR Hospital, NZB:30/78."

12. Thus, for want of X-ray, the Medical Officer of the Government Hospital, Banswada recorded the injuries as simple. But there is evidence in abundance, even if the evidence of P.W.2 is not believed in view of the observation of this Court

then made in other cases where the very same doctor deposed as a witness by issuing disability certificates, more particularly, Exs.A.43 and A.44, which were issued by Yashoda Super Specialty Hospital at Malakpet, which would have unravelled truth or otherwise in the stand taken by the petitioner. Therefore, it is a fit case to remit the mater to the Tribunal.

13. Thus, the claim petition is remitted to the Tribunal with a direction to dispose of it within six months from the date of receipt of copy of this order by affording opportunity to the petitioner and the respondents to lead further evidence in order to prove the documentary evidence, more particularly, Exs.A.43 and A.44 as per the evidential rule.

14. With the above direction, the instant appeal is disposed of by setting aside the order and decree passed by the Tribunal. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

02nd April, 2015

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