

HON'BLE MRS JUSTICE ANIS

CMA No. 2837 of 2004

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JUDGMENT:

This CMA is filed against the order and decree, dated 31.10.2001, passed in OP No. 847 of 1997 by the Chairman, Motor Accidents Claims Tribunal-cum-Additional District Judge, Nizamabad.

2. The parties are hereinafter referred to as they were arrayed before the Tribunal for the sake of convenience.

3. The petitioners filed OP No. 847 of 1997, under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.2,00,000/- for the injuries sustained by him in the motor vehicle accident. The brief averments made in the petition are as follows. The petitioner is a businessman-cum-Radiator Mechanic and was earning a sum of Rs.6,000/- per month and he is a resident of Nirmal, Adilabad District. That on 05.10.1997, he was traveling in a lorry bearing registration No.MH-31-939 as a owner of the goods from Hyderabad to Nagpur. When the said lorry reached near Padkal Thanda village sivar on Hyderabad to Nagpur road, another lorry bearing registration No.AP26-T-567 came from opposite direction driven by its driver in a rash and negligent manner and dashed the lorry in which the petitioner was traveling. Due to the said accident, the petitioner suffered fracture to his left leg foot and his left fibula fractured and he also received injuries to other parts of his body. Initially, he was admitted in the

Government Hospital, Armoor, and, thereafter, he was treated at M.J. Hospital, Armoor, and incurred an amount of Rs.80,000/- towards medicines. According to the petitioner, the accident was occurred due to the rash and negligent driving of the driver of the lorry bearing registration No.AP26-T-567 and, after receiving a complaint, the police, Jakranpalli Police Station, registered a case in Crime No.66 of 1997, under Section 338 IPC, against the driver of the lorry bearing registration No.AP26-T-567. Finally, the petitioner prayed the Court to grant compensation of Rs.2,00,000/-

4. The first respondent-owner of the offending lorry remained *ex parte*.

5. The second respondent-Insurance Company filed counter affidavit and the averments made in the counter are as follows. The second respondent put the petitioner to prove the manner of accident and his age. The second respondent also put the petitioner to prove that he was doing business and earning Rs.6,000/- per month and denied that the driver of the lorry bearing No.AP25-T-567 drove the vehicle in a rash and negligent manner and the compensation claimed by the petitioner is excessive and exorbitant and finally prayed the Court to dismiss the petition.

6. Basing on the above pleadings, the Tribunal framed the following issues.

“1. Whether the accident was occurred due to rash and negligent driving of the lorry bearing No.AP 26-T-567 by its driver?

2. Whether the petitioners are entitled for compensation? If so, to what amount and against

which of the respondent?

3. To what relief?"

7. During enquiry, the petitioner besides examining himself as PW.1 also examined Dr. C. Srinivas as PW.2 and got marked Exs.A1 to A4 and Ex.C1. On behalf of the second respondent-Insurance Company, no oral or documentary evidence was adduced.

8. The Tribunal, after considering the oral and documentary evidence produced by the petitioner, held that the accident was occurred due to rash and negligent driving of the driver of the lorry bearing registration No.AP-26T-567 and awarded compensation of Rs.60,000/- with interest at 12% p.a. Not satisfied with the compensation awarded by the Tribunal, the petitioner has preferred the present appeal.

9. Learned counsel for the petitioner-claimant argued that though the petitioner suffered grievous injuries, the Tribunal has not granted any amount towards medical expenses and pain and suffering. He further argued that the Tribunal also not granted any amount towards loss of earnings though the petitioner was treated as inpatient in the hospital for about 10 days.

10. On the other hand, learned counsel for the second respondent-Insurance Company contended that the Tribunal, basing on the oral and documentary evidence on record, has granted a reasonable compensation to the petitioner and the said finding needs no interference. However, he submitted that a reasonable amount may be awarded towards pain and

suffering and loss of earnings.

11. The point that arises for consideration is whether the petitioner is entitled for enhancement of compensation?

12. Perused the evidence of PWs.1 and 2. As per Ex.A2-wound certificate, issued by the Civil Hospital, Armoor, it is evident that the petitioner sustained fracture on his left fibula and four simple injuries on right knee, left knee, on left leg and laceration on occipital region and he was hospitalized for about 10 days. Considering the evidence of PW.2, the Tribunal has rightly granted Rs.35,000/- as compensation for the fracture injury sustained by the petitioner and also Rs.12,000/- for four simple injuries sustained by him. As the petitioner failed to produce any evidence to show that he spent Rs.80,000/- towards medical expenses, the Tribunal has granted a sum of Rs.7,000/- towards medical expenses and extra nourishment. Admittedly, in the accident the petitioner suffered grievous and simple injuries and he was treated as inpatient in the hospital for about 10 days. Considering the nature of injuries and the period of treatment, I am of the considered view that the petitioner is entitled to another sum of Rs.7,000/- towards medical expenses, in addition to the amount already granted by the Tribunal, and Rs.2,000/- towards pain and suffering. Since the petitioner was treated as inpatient in the hospital for about 10 days, during that period, he must not have been worked, therefore, he is entitled to a sum of Rs.5,000/- towards loss of earnings during the period of treatment undergone by him in the hospital. Thus, in all, the petitioner is entitled to another sum of Rs.14,000/- in addition to the compensation amount already

granted by the Tribunal.

13. Accordingly, the CMA is partly allowed enhancing the compensation amount from Rs.60,000/- to Rs.74,000/-. The enhanced amount shall carry interest at 9% p.a., from the date of petition till realization. There shall be no order as to costs.

14. As a sequel thereto, the miscellaneous applications, if any, pending in this CMA shall stand closed.

ANIS, J

Date: 22.06.2015.

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