

HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

M.A.C.M.A.No.1135 of 2005

JUDGMENT:

Dissatisfied with the award of Rs.24,115/- with interest at 6% p.a., as against the claim of Rs.1,45,000/-, laid under Section 163-A of the Motor Vehicles Act, 1988 (for short, 'the Act') and the A.P. Motor Vehicles Rules, 1989, by the order dated 03.03.2005 in M.V.O.P.No.537 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal – cum- V Additional District Judge, Guntur, the instant appeal is preferred by the petitioner seeking enhancement.

For convenience sake, the parties hereinafter referred to as they were arrayed before the Tribunal in the O.P.

Facts, in brief, are that, on 13.05.2003, at about 7.30 a.m., the petitioner was proceeding on a scooter

No. AP 7E 1029 from Pandaripuram to reach Amaravathi road, riding his scooter on the left side of lakshmipuram main road and, when he reached near Mina beauty clinic, the driver of the first respondent drove the bus in a rash and negligent manner coming from ring road towards lakshmipuram side and dashed the scooter from opposite direction, due to which he fell down and received grievous injuries to his right leg sustaining permanent disability. He was shifted to Government General Hospital, Guntur and, after giving first aid, he was shifted to Private Nursing home of Dr.Y.Lakshmana Swamy, M.S (Orthopaedic), where he underwent treatment as an inpatient. The concerned police also registered crime against the driver of the bus. The petitioner claims that he was bed-ridden even on the date of making claim petition and, therefore, he sought to grant compensation as mentioned above stating that he was 35 years old, earning Rs.150/- per day as a plumber and due to disability he was not able to attend to his profession.

The first respondent remained ex parte. The second respondent filed written statement opposing the claim by raising various pleas, including that the driver of the bus, belonging to the first respondent, did not hold valid driving licence and, finally, sought to dismiss the claim petition against it.

Basing on the said pleadings, the following three issues were framed:

- “ 1. Whether the accident occurred due to the rash and negligent driving of the bus No. AP7T 3359 by its driver? and, if so, the petitioner sustained any injuries?
2. What is the just amount of compensation that the petitioner can be granted?
- 3.To what relief?”

During enquiry, the petitioner examined himself as PW.1 besides examining Dr Y.Lakshmana Swamy as PW.2 and marked Exs.A.1 to A.8. The Tribunal, tendered finding on issue Nos.1 and 2 holding that as against 20% partial permanent disability, taken 5% and the age of the petitioner as 38 years, and the notional income at Rs.15,000/- p.a, applied multiplier ‘16’ and arrived the loss of earning capacity at Rs.12,000/-, besides a sum of Rs.7,000/- granted for simple and grievous injuries, Rs.5,115/- towards medical expenses and, thus, granted a sum of Rs.24,115/- towards compensation with interest at 6% p.a.

It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that, without appreciating the evidence of PW.2 in proper perspective, despite there was shortening of right leg by one inch and restriction of right knee and ankle movement, the Tribunal has taken 5%, as against 20% partial permanent disability assessed by the doctor, which ought not to have been done by the Tribunal and that the Tribunal applied wrong multiplier and ought to have applied proper multiplier as per the second Schedule to the Act and granting interest at 6% p.a. was also on lower side as the prevailing rate of interest on the date of accident was more than 12% and, hence, sought to grant compensation.

Heard Sri N.Subba Rao, learned counsel for the appellant, and Sri B.Devanand, learned Counsel for the second respondent – Insurance Company. No representation for the first respondent.

At the outset, it is to mention that, the documentary evidence, Exs.A.1 and A.2, would make it abundantly clear that the petitioner, soon after taking place of the accident on 13.05.2003, was admitted in Government General Hospital, Guntur and, only, on 14.05.2003, he appears to have got him shifted to private hospital of Dr Y.Lakshmana Swamy, who was examined as PW.2. The petitioner

submitted documents relating to treatment he has undergone under PW.2. The petitioner, for reasons best known to him, has not filed wound certificate or the extract of accident register depicting the nature of injuries mentioned therein. In the absence of wound certificate issued by the Government General Hospital, Guntur, certainly, it would be difficult for either the Tribunal or this Court to rely on the description of injuries mentioned in Ex.A.3 by PW.2 since the injuries that would be found in the wound certificate recorded in the Government General Hospital, Guntur unless are correlated with the injuries said to have found by PW.2, and described in Ex.A.3, to determine just and adequate compensation. Therefore, the matter is remitted to the Tribunal to give an opportunity to the appellant herein to secure wound certificate from the Government General Hospital, Guntur or the extract of accident register so as to properly appreciate Exs.A.3 to A.8, including partial permanent disability projected by the petitioner. It is also open to the contesting respondents to lead any evidence, if they so choose. The Tribunal is also directed to dispose of the matter within a period of six months from the date of receipt of a copy of this order.

Accordingly, the Appeal is disposed of. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand disposed of.

A.SHANKAR NARAYANA,J

Date: 24.03.2015

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