

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

-
M.A.C.M.A.No.2248 of 2005

JUDGMENT:

The injured, who is the claimant in O.P.No.489 of 2003 on the file of the Court of the Motor Accidents Claims Tribunal (Additional District Court), Vizianagaram (for short, Tribunal), is the appellant herein.

2. The appellant filed the said OP claiming compensation of Rs.1,00,000/- alleging that on 11.40.2003 when he was traveling in an auto bearing No.AP35T 4438 from Jonnada Village to Vizianagara along with two others, and when the auto reached near Khan Engineering Workshop at Gokapeta, V.T.Agraharam Vizianagaram at about 7.45 a.m., the driver of the auto drove the auto in a rash and negligent manner and applied sudden breaks, as a result of which, the appellant fell down on the road and the auto fell on the appellant, thereby he sustained grievous injuries. Immediately, the appellant was taken to Government hospital, Vizianagarm for treatment. The driver and owner of the offending vehicle remained *ex parte* and the case was contested by the insurance company.

3. The Tribunal framed the following issues.

“1. Whether the accident occurred due to the rash and negligent driving of the auto bearing No.AP35T 4438 by R.1?

2. Whether the petitioner is entitled for any compensation, from any of the respondents; if so, from which of the respondents?

3. To what relief?”

4. On behalf of the appellant, P.Ws.1 and 2 were examined and got marked Exs.A.1 to A.6 and Exs.X.1 and X.2. On behalf of the insurance company, Ex.B.1 insurance policy was marked with consent.

5. The Tribunal, on the basis of oral and documentary evidence, held that the accident occurred due to rash and negligent driving of the driver

of the auto. The Tribunal, accepting the injuries sustained by the appellant, awarded a fixed amount of Rs.25,000/-, by its award dated 16.02.2004, under Section 140 of the Motor Vehicles Act, 1988, even though the claim was made under Section 166 of the M.V.Act. Seeking enhancement of the said compensation, the present appeal is filed.

6. This Court carefully perused Ex.A.2 wound certificate, and as per Ex.A.2, the petitioner sustained fracture on left knee joint. He was admitted in Sai Orthopedic Hospital, Vizianagaram, where he took treatment for a period of 11 days i.e., from 11.04.2003 to 22.04.2003.

7. In view of the fracture to the left knee joint, the appellant is entitled for an amount of Rs.15,000/- and an equal amount shall be awarded to him for the paid and suffering. During the period of hospitalization, somebody must have attended to him and he must have lost his earnings also. An amount of Rs.5,000/- is awarded towards attendant charges and Rs.2,500/- towards loss of earnings. After discharging from hospital also, the appellant must have undergone some discomfort, for which, he must have taken physiotherapy treatment and hence he is entitled for an amount of Rs.2,500/-. Thus, in all, the appellant is entitled to Rs.40,000/-.

8. Hence, the award of the Tribunal dated 16.02.2004 in O.P.No.489 of 2003 awarding an amount of Rs.25,000/- is enhanced to Rs.40,000/-. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of petition till the date of realization.

9. Accordingly, the appeal is allowed. Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

A.RAMALINGESWARA RAO, J

Date: 21.01.2016
TJMR