

HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A.No.433 OF 2006

JUDGMENT:

This appeal is arising out of Original Petition No.1779 of 2003 on the file of the Motor Accident Claims Tribunal-cum-XXIII Additional Chief Judge (FTC), City Civil Court, Hyderabad (for short, Tribunal).

2. Sri V.Atchuta Ram, learned counsel for appellant advanced arguments on behalf of appellant/claimant. The claim against first respondent is dismissed for default vide Court order dated 22.04.2016. There is no representation on behalf of respondent No.2 the New India Assurance Company Limited.

3. The brief facts of the case are as follows:

On 28.03.2003 at about 7.00 pm while the petitioner was crossing the road at KPHB Housing Board, one scooter bearing No.AP9BQ T/R No.3286 came in a high speed in a rash and negligent manner and hit the petitioner, as a result of which, the petitioner fell down and received grievous injuries to his left leg and head. Immediately, he was taken to Gandhi Hospital, Secunderabad and took treatment there for 15 days as inpatient. In the said accident, the petitioner sustained compound fracture of both bone left tibia and closed grievous head injury. In respect of the above incident, a criminal case was registered in Crime No.221 of 2003 on the file of the Police Station, Kukatpally. By the date of accident, the age of the petitioner was 25 years and he was earning Rs.5,000/- p.m., and due to the multiple fractures to his left leg, the petitioner was unable to walk and squat and he lost his earning capacity as a driver. Hence, he filed said OP claiming compensation of

Rs.1,50,000/- for the injuries sustained by him in the said accident.

4. The respondents filed counter denying the allegations made in the petition and attributed negligence to the petitioner and sought for dismissal of the claim petition.

5. Basing on the above pleadings, the Tribunal below framed the following issues:

- (1) Whether the accident in question took place on 28.3.2003 on account of the rash and negligent driving of the scooter bearing No.AP9BQ TR No.3286 by its driver?
- (2) Whether the petitioner is entitled for compensation, if so, to what amount and from whom?
- (3) To what relief?

6. On behalf of the petitioner, he got himself examined as P.W.1, and got marked Exs.A.1 to A.16. He also got examined Dr.T.P.Prasad, Orthopaedic Surgeon as P.W.2. On behalf of the second respondent, Ex.B.1 was marked and no witnesses were examined.

7. On consideration of the oral and documentary evidence on record, the Tribunal held that the accident took place due to rash and negligent driving of the driver of the scooter bearing No.AP9BQ T/R No.3286, and awarded Rs.1,000/- towards transportation, Rs.1,000/- towards damage to clothes, Rs.5,000/- towards pain and sufferance, Rs.5,000/- towards attendant expenses, Rs.5,000/- towards extra nourishment, Rs.5,000/- towards medical expenses, Rs.6,000/-

towards loss of earnings and Rs.5,000/- towards uneasiness, inconvenience & temporary disability, thus totalling to Rs.33,000/-. Not being satisfied with the quantum of compensation, the petitioner preferred the present appeal.

8. The point for consideration in this matter is whether the petitioner is entitled for enhancement of compensation?

9. Learned counsel for the appellant submits that the Tribunal while awarding the compensation has not taken into consideration 20% disability suffered by the appellant. He placed reliance on the evidence of P.W.2, a private medical officer, who issued the disability certificate showing the disability as 20%.

10. It is obvious that in para 10 of the Award, the Tribunal though referred to the evidence of the medical officer, has not considered the certificate issued by him showing 20% disability suffered by the appellant. This fact clearly shows that the Tribunal has not considered the certificate issued by the medical officer. The finding of the Tribunal would show that though the accident occurred on 28.03.2003, the disability certificate was issued on 03.07.2005 and therefore the certificate was not taken into consideration for assessing the compensation.

11. As a matter of fact, P.W.2 is a Professor/Orthopedic Surgeon working in the Government hospital since December, 2004. The Tribunal did not consider his certificate on the

ground that the medical officer has not examined the petitioner after the accident, and that he has issued the disability certificate in his private capacity in his private clinic on 03.07.2005. The Tribunal has observed that though the medical board has been constituted in the Gandhi hospital, the disability certificate was not issued by the medical board and therefore disability certificate cannot be taken into consideration. The Tribunal, however, awarded a total compensation of Rs.33,000/- as stated above.

12. Learned counsel for the appellant submits that the appellant has suffered disability, but he could not secure the certificate from the medical board, but however, a private medical practitioner, who is a Orthopedic Surgeon working in the Government hospital, has issued the certificate showing the disability as 20% which can be taken into consideration for assessing the compensation. He further submitted that the Tribunal, though did not consider the disability certificate, has awarded a very meager compensation under three separate heads towards uneasiness, inconvenience & temporary disability and therefore requested for enhancement of the compensation. In this regard, there are no valid grounds to interfere with the award of the Tribunal in not considering the 20% disability, as the certificate was issued by a private medical practitioner.

13. It is obvious that the Motor Vehicles Act is a beneficial legislation. The appellant has suffered grievous injuries in this

case. There is a medical certificate issued by a private medical practitioner by showing the disability as 20%. The appellant was hospitalized for a period of 15 days and later he could not have attended to his duties for about two months because of the injuries suffered by him.

14. In the circumstances, in the interest of justice, it would be just and proper if the compensation of Rs.5,000/- awarded under three heads i.e., towards uneasiness, inconvenience & temporary disability is enhanced to Rs.20,000/-. With regard to interest, the Tribunal awarded interest @ 6% per annum, which is on lower side and it is just and proper to enhance the same by 7.5% per annum.

15. In the result, the appeal is partly allowed, enhancing the amount of compensation from Rs.33,000/- to Rs.48,000/- with interest @ 7.5% per annum from the date of petition till realization. The second respondent shall deposit the amount within a period of two months from the date of this order, and on such deposit, the appellant is permitted to withdraw the entire amount. No order as to costs. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

G. SHYAM PRASAD, J

Date: 31.10.2016.
TJMR