

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1145 of 2009

JUDGMENT :

The instant Civil Miscellaneous Appeal is preferred by the appellant-petitioner aggrieved by the judgment and decree dated 20.08.2005, passed in O.P.No.281 of 2002 by the Motor Accidents Claims Tribunal (District Judge), Nizamabad (for brevity "the Tribunal"), whereby and whereunder a sum of Rs.47,392/- was awarded towards compensation with interest @ 9% per annum, as against the claim of Rs.3,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988, for the injuries sustained by her in a motor accident, seeking enhancement of compensation.

2. The appellant herein is petitioner, respondent No.1 is the owner of offending Van bearing No.AP-25/T-6511; and respondent No.2 – United India Insurance Company Limited is the insurer in O.P.No.281 of 2002. For the sake of convenience, the parties are referred to as they are arrayed in O.P.No.281 of 2002 before the Tribunal.

3. The fact situation would show that on 02.01.2002, the petitioner along with her mother-in-law was travelling in a jeep bearing No.AP-25/U-244 from Indalwai to Roopla Thanda and when it reached near Gannaram Bridge on National Highway No.7, at about 10-15 a.m., a Van bearing No.AP-25/T-6511 coming from Kamareddy side and going towards Indalwai, driven by its driver at high speed in a rash and negligent manner, dashed the jeep, due to which the petitioner sustained fracture injuries to skull, right elbow, upper forehead, crush injury to right foot, multiple and grievous

injuries to her person, along with others. The petitioner states that immediately herself and others were shifted to Amruta Laxmi Hospital, Nizamabad, where she was treated as an inpatient and incurred Rs.50,000/- towards treatment. Stating that she was aged 19 years, hale and healthy doing firewood business, vegetable business, besides being an agriculturist, earning a sum of Rs.10,000/- to Rs.12,000/- per month and due to the multiple injuries, she sustained permanent disability and lost her earning capacity and hence claimed a sum of Rs.3,00,000/- towards compensation.

4. Before the Tribunal, the 1st respondent – owner of the offending van remained exparte. The 2nd respondent – insurer alone contested the claim by raising various pleas and pleaded contributory negligence by the drivers of both the vehicles and thereby sought to dismiss the claim petition against it.

5. Basing on the pleadings, the Tribunal framed the following issues for fixing liability and determining the amount of compensation:-

- (1) Whether the accident has taken place due to rash and negligent driving of the vehicle bearing No.AP-25/T-6511 by its driver?
- (2) Whether the petitioner is entitled for compensation? If so, to what just amount and against whom?
- (3) To what relief?

6. During the course of enquiry, the petitioner, besides examining herself as P.W.1, got examined P.W.2 – Dr. Jaya Prakash, who treated her, and marked Exs.A-1 to A-8 and Exs.C-1 and C-2, which are Disability Certificate and Discharge Summary,

respectively. On behalf of the 2nd respondent - insurer, none were examined, except marking Ex.B-1 – copy of insurance policy.

7. The Tribunal, having recorded a finding on Issue No.1 in favour of the petitioner; on Issue No.2, though, mentioned the description of injuries, as contained in Ex.A-2 – Certified copy of Wound Certificate issued by the Civil Assistant Surgeon, Government Headquarters Hospital, Nizamabad, in para-17 of the judgment, basing on the evidence of P.W.2 and the contents of Ex.A-3 – Medico Legal Register, wherein it was mentioned that the petitioner sustained fracture of 6th and 7th right side ribs, fracture of clavicle right, which are grievous in nature, granted a total sum of Rs.30,000/- towards injuries; Rs.5,000/- towards pain and suffering; Rs.12,392/- towards medical expenses, as per Ex.A-5 – Medical Bills, thus, making a total sum of Rs.47,392/- towards compensation with interest @ 9% per annum from the date of petition till the date of realisation.

8. Dissatisfied, the petitioner has filed the present Civil Miscellaneous Appeal, contending in the grounds that the Tribunal ought to have taken 40% disability, as spoken to by P.W.2 – Doctor and the Certificate issued by him, and the Tribunal has not properly appreciated the evidence on record in determining the compensation and, therefore, sought to grant the balance amount.

9. Heard Sri Venkateshwar Varanasi, learned counsel for the appellant – petitioner. None appeared for 2nd respondent – insurer, while there is an endorsement that 1st respondent-owner of the offending Van is not a necessary party.

10. Perused the impugned judgment and the evidence on record, both oral and documentary.

11. Though, in the petition averments, the petitioner has not disclosed that she was immediately shifted to the Government Headquarters Hospital, Nizamabad, Ex.A-2 – Wound Certificate would reflect that on the very same day, she was shifted to the Government Hospital, Nizamabad, and P.W.2 - Doctor, who examined her, has issued Ex.A-2 – wound certificate, showing description of the injuries sustained by her, the nature of which are noted as simple, as follows:

- “(1) Laceration on middle 3rd of right side of head 2 x 2 cms;
- (2) Laceration on middle 3rd of left side of head 5 x 3 cms;
- (3) Laceration over upper part of forehead;
- (4) Laceration on right elbow 5 x 3 cms;
- (5) Laceration on back over right part 3 x 2 cms.”

However, in her evidence as P.W.1, the petitioner stated that immediately after the accident, she was shifted to the Government Hospital, Nizamabad, and from there, she was shifted to Amruta Laxmi Hospital, Nizamabad, where she took treatment as an inpatient for 15 days. In her cross-examination, the petitioner gave a positive answer, stating that she took treatment in Government Hospital, Nizamabad, for 2 or 3 days, which, certainly, runs contra to the assertion of the petitioner in her chief-examination that immediately from the Government Hospital, she was shifted to a Private Hospital. In fact, the evidence of P.W.2, when perused, would reflect that he examined the petitioner on 02.01.2002 and described the injuries, but the answer given by him in the cross-examination that Ex.A-2 – Wound Certificate issued by the Civil Assistant Surgeon of Government Headquarters Hospital, Nizamabad, on 02.01.2002, would show that all the five injuries are simple in nature. However, he admits that the injuries mentioned in Ex.A-2 do not correspond with the injuries mentioned in Exs.A-3, C-

1 and C-2. He refers P.W.1 as Neela Bai, w/o. L. Raju, in his cross-examination. A perusal of Ex.A-3 – Medico Legal Register would show the name of the petitioner as Neela Bai, w/o. L. Raju, R/o. Vengalpad, Nizamabad, so also in Ex.C-1. However, in the cause title of the claim petition before the Tribunal, the petitioner described herself as Smt. Lavudya Neela alias Neela Bai, w/o. Lavudya Vittal. Nowhere, she describes her husband's name as L. Raju.

12. Thus, not only the description of the injuries in Ex.A-2 would not tally with the injuries in Exs.A-3 and C-1, but, even the evidence of P.W.1 itself is not in accordance with what P.W.2 – Doctor asserts. As already recorded above, while the petitioner, in her cross-examination, states that she was treated as an inpatient for 2 or 3 days in Government Hospital, Nizamabad, whereas P.W.2 – Doctor asserts that on 02.01.2002 itself, P.W.1 was admitted in their Hospital and was treated as an inpatient for 15 days. Thus, there is every doubt as regards Exs.A-3 and C-1 issued by P.W.2 – Doctor, as to whether they relate to the petitioner or some other person. The Tribunal, somehow, did not go into these details and its approach appears to be superficial. In that view of the matter, the petitioner is not entitled to any enhancement of compensation and the Civil Miscellaneous Appeal is liable to be dismissed.

13. Accordingly, this Civil Miscellaneous Appeal is dismissed, confirming the judgment and decree dated 20.08.2005, passed in O.P.No.281 of 2002 by the Tribunal. No order as to costs.

14. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE A. SHANKAR NARAYANA

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