

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1323 of 2009

JUDGMENT :

The instant Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for brevity "the Act"), is preferred by the appellant-petitioner, aggrieved by the judgment and decree dated 31.07.2007, passed in O.P.No.1324 of 2004 by the Chairman, Motor Accident Claims Tribunal (II Additional District Judge – Fast Track Court), Nizamabad District (for brevity "the Tribunal"), whereby and whereunder a sum of Rs.35,000/- was awarded towards compensation with interest @ 7.5% per annum, as against the claim of Rs.2,00,000/-, laid under Section 166 (1)(a) of the Act, r/w. Rule 455 of the A.P. Motor Vehicles Rules, 1989, for the injuries sustained by him in a motor accident, mainly on the ground that without properly appreciating the evidence of P.W.2 on record, the Tribunal has granted a meager sum of compensation.

2. The appellant herein is the petitioner; respondent No.1 – owner of the offending Tata Sumo bearing No.AP 25D 9369, is respondent No.1; and respondent No.2 - National Insurance Company Limited, is respondent No.2, in O.P.No.1324 of 2004. For the sake of convenience, the parties are referred to as they are arrayed in O.P.No.1324 of 2004 before the Tribunal.

3. The facts would show that on 21.07.2004 at about 9-30 a.m., while the petitioner was travelling in a Jeep bearing No.AP 25T 5337, from Ravutla village to Rampoor village and when the said Jeep reached the limits of Vengalpad village, a Tata Sumo bearing

No. AP 25D 9369, being driven by its driver in a rash and negligent manner at high speed came on wrong side of the road and dashed against the Jeep, in which the petitioner and others were travelling, due to which the petitioner sustained multiple fracture of both bones of left leg, fracture of left hand, fracture of left leg, dislocation of left knee, dislocation and fracture of left hip joint and injuries to head and other parts of the body. The petitioner was initially treated in Government Headquarters Hospital, Nizamabad, and from there, he was referred for Experts treatment. He claims that even on the date of filing of the claim petition, he was still suffering with pain and undergoing treatment. He claims that he was aged 28 years, earning Rs.12,000/- per month by doing agriculture and business in milk vending and, therefore, though, estimated compensation at Rs.72,68,000/-, however, restricted the claim to Rs.2,00,000/-.

4. The 1st respondent – owner of the offending vehicle remained exparte and the 2nd respondent – insurer alone contested the claim by filing written statement.

5. Basing on the pleadings, the Tribunal framed three issues.

6. During enquiry, besides examining himself as P.W.1, the petitioner got examined Dr. V. Akhilesh, Medical Officer, as PW.2, and marked Exs.A-1 to A-3, besides marking Exs.C-1 to C-4, on his behalf. On behalf of the 2nd respondent – insurer, R.W.1 was examined and a copy of Insurance Policy was marked as Ex.B-1.

7. The Tribunal, having recorded a finding in favour of the petitioner on issue No.1, by disbelieving the evidence of R.W.1 and also discarding Ex.C-4 – Disability Certificate issued by

P.W.2 by assigning reasons, granted a sum of Rs.25,000/- towards injuries, Rs.5,000/- towards pain and suffering, Rs.3,000/- towards medical expenditure, Rs.1,000/- towards transportation charges, and Rs.1,000/- towards extra-nourishment, thus, making a total compensation of Rs.35,000/- with interest @ 7.5% per annum from the date of the petition till the date of realisation.

8. The aforesaid judgment and decree are under challenge in the present appeal, mainly on the ground that a meagre amount was granted towards compensation and that the Tribunal has not properly appreciated the evidence on record and did not take into consideration 35% disability sustained by the petitioner, while assessing the amount of compensation.

9. Heard Sri B. Venkateshwar Varanasi, learned counsel for the appellant/petitioner. Though the 2nd respondent – insurer is served with notice, none appears for it.

10. Perused the order under challenge and the evidence on record.

11. The short question that involved in the present appeal is, whether the compensation awarded by the Tribunal is just and adequate?

12. The Tribunal, on the premise that Ex.C-4 - Disability Certificate was issued by P.W.2 in private capacity, discarded the same. Even in the cross-examination, P.W.2 admitted that there is a Medical Board constituted at District Headquarters Hospital, Nizamabad, which issues the Disability Certificates. He gave a positive answer that he is not a Member of the said Board. Therefore, that finding recorded by the Tribunal in excluding Ex.C-

4 from consideration cannot be faulted.

13. Admittedly, the petitioner sustained fracture of right shaft femur thigh, fracture of both bones of left femur, an abrasion on left knee, and an abrasion on left hip. The Tribunal, somehow, without properly scrutinising the pain and suffering undergone by the petitioner and the inconvenience which he would have experienced during the period of surgical intervention, just granted a lumpsum amount of Rs.25,000/- towards fracture injuries. Therefore, there is no proper appreciation of evidence on record by the Tribunal.

14. When the petitioner sustained fracture of right shaft femur thigh and fracture of both bones of left femur, he would have been immobilised for quite a long time. Therefore, keeping in view the nature of injuries, as spoken to by P.W.2, certainly, the amount of Rs.25,000/- awarded by the Tribunal requires enhancement and, therefore, the sum of Rs.25,000/- granted by the Tribunal towards injuries is enhanced to Rs.60,000/-, including pain and suffering undergone by the petitioner on account of the said injuries.

15. The amounts of Rs.3,000/- towards treatment expenditure, and Rs.1,000/- towards transportation charges granted by the Tribunal, are maintained. Concerning the amount of Rs.1,000/- granted towards extra-nourishment, keeping in view, the nature of injuries sustained by the petitioner, the same is certainly inadequate, therefore, the said amount is enhanced to Rs.10,000/-. Further, the Tribunal has not granted any amount towards temporary loss of earnings. Therefore, keeping in view, that the petitioner must have been immobilised, atleast, for six months, @ Rs.2,000/- per month, a sum of Rs.12,000/- is granted towards

temporary loss of earnings. Thus, the petitioner is entitled to a total compensation of Rs.86,000/- (Rs.60,000/- + Rs.3,000/- + Rs.1,000/- + Rs.10,000/- + Rs.12,000/- = Rs.86,000/-), as against the compensation of Rs.35,000/- awarded by the Tribunal, with interest @ 7.5% per annum, as awarded by the Tribunal, on the enhanced amount of Rs.51,000/- also.

16. Accordingly, the Civil Miscellaneous Appeal is allowed in part, enhancing the amount of compensation from Rs.35,000/- to Rs.86,000/- (Rupees eighty six thousand only) with interest @ 7.5% per annum on the enhanced amount of Rs.51,000/- also, from the date of the petition till realization. There shall be no order as to costs.

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

JUSTICE A. SHANKAR NARAYANA

17.08.2016.

Msr

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