

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A No. 1569 OF 2009

JUDGMENT:

The present appeal is preferred by the claimant in M.O.P.No.283 of 2006 on the file of the Chairman, Motor Accidents Claims Tribunal – cum – II Additional District Judge, F.T.C, Parvathipuram (for brevity 'the Tribunal'), aggrieved by the order and decree dated 27.08.2008 passed in the said M.O.P awarding a sum of Rs.15,000/- as against the claim of Rs.1,00,000/-.

2. For the sake of convenience, the parties are referred to as arrayed in the M.O.P. before the Tribunal.

3. The fact situation would reflect that on 26.12.2005, while the appellant/claimant, who was aged 14 years at the time of accident, was travelling in an auto bearing No. AP 31 W 4520 and at about 2.00 p.m, when the auto reached Naramnaiduvalasa Village, a Maxi Cab bearing No. AP 35 U 0442, which was coming from Balijipeta to Galavalli, owned by the first respondent and driven by its driver in a rash and negligent manner, dashed the auto, due to which the claimant sustained injuries. Immediately, he was shifted to Community Health Centre, Bobbili, and thereafter, he was shifted to K.G. Hospital, Visakhapatnam. Claiming that he took treatment as in-patient for 60 days and spent an amount of Rs.25,000/- towards medicines and extra nourishment and that prior to the accident, he was earning Rs.100/- per day by working as a Server in Rajam Tea Stall, he sought a sum of Rs.1,00,000/- as compensation under Section 166 of the Motor Vehicles Act, 1988, from respondent Nos.1 and 2, who are the owner and insurer of the crime vehicle. Since the claimant was minor, he was represented by his father.

4. The first respondent remained *ex parte* before the Tribunal. The second respondent opposed the claim by filing counter denying all the allegations and sought to dismiss the claim petition.

5. The Tribunal, on the basis of the pleadings, framed three issues.

6. During the course of evidence, the claimant besides examining himself as P.W.1, has examined an eyewitness to the incident as P.W.2 and marked Exs.A.1 to A.4 to substantiate his claim. On behalf of the second respondent-Insurance Company, no evidence, either oral or documentary was adduced.

7. The Tribunal, having recorded a finding on issue No.1 in favour of the claimant, on issue No.2, held that the claimant has received four simple injuries, and accordingly granted Rs.5,000/- towards transport to hospital, extra-nourishment and medicines and Rs.10,000/- towards compensation for pain and suffering. Thus, in total the Tribunal awarded a sum of Rs.15,000/- to the claimant.

8. Dissatisfied with the quantum of compensation, the claimant preferred the present appeal.

9. Heard Sri Venkateswara Rao Gudapati, learned counsel for the claimant/appellant and Sri K. Ashok Rama Rao, learned Standing Counsel for the second respondent – Insurance Company. Though, service was completed on the first respondent-owner of the vehicle, none appears for him.

10. The learned counsel for the appellant contended that though, the appellant sustained two grievous injuries, the Tribunal has granted only Rs.15,000/- towards compensation on the ground that the doctor, who treated the appellant, was not examined. According to him, Ex.A.2-wound certificate would prove that the appellant sustained grievous injuries and therefore, he sought to enhance the compensation.

11. ExA.2-Wound Certificate would contain the description of injuries as follows:

- “1. Xray – Left arm – Supracondylar # humerus
- 2. X-ray Right thigh # Shaft femur
- 3. X-ray closed Ap – No bony injury
- 4. X-ray spine – No bony injury”.

12. The opinion tendered by the Civil Assistant Surgeon in Ex.A.2 would show that injury Nos.1 and 2 are grievous in nature, whereas the other two injuries are simple. However, the Tribunal overlooked the fact of the appellant sustaining grievous injuries and only accepted that part, which deals with simple injuries projected in Ex.A.2, on the main ground that the doctor was not examined. It is no doubt true, to prove injuries as such, medical evidence is required. But where a part of the document is accepted by the Tribunal, it was not proper for it to discard the other part of the document. In view of the same, and keeping in view that injury Nos.1 and 2 sustained by the appellant are grievous in nature, an amount of Rs.40,000/- is granted i.e., Rs.20,000/- each to grievous injuries including pain and suffering, apart from Rs.15,000/- granted by the Tribunal.

13. In the result, the Civil Miscellaneous Appeal is allowed in part, enhancing the amount of compensation from Rs.15,000/- to Rs.55,000/- (Rupees fifty five thousand only) along with interest @ 7.5% per annum on the entire amount as against @ 6% granted by the Tribunal from the date of petition till realisation. No order as to costs.

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

A. SHANKAR NARAYANA, J

Date: 05.08.2016
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