

THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A. No.7 OF 2006

Date: 27.10.2016

Between:

B. Rajeshwar

... Appellant

And

1. Mohd. Saleem

2. The New India Assurance Company Limited,
rep. by its Branch Manager, Branch Office:
APSFC Building, 1st Floor, Opp: ZP Office,
Subhash Nagar, Nizamabad.

...

Respondents

(Dismissed for default vide court order
against R-1)



THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

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JUDGMENT:

The claimant filed this appeal having been aggrieved by the order/Award of the Motor Vehicle Accidents Claims Tribunal-cum-District Judge, Adilabad (for short, 'the Tribunal) in O.P.No.590 of 2002 dated 20.10.2005, awarding compensation of Rs. Rs.26,345/- with interest at 7.5% per annum from the date of presentation of petition, as against the claim of the claimant of Rs.1,50,000/-, in the claim petition under Section 166 (1) (a) and 163 (A) of the Motor Vehicles Act, 1988.

Heard the learned counsel for the appellant and perused the material available on record.

The parties hereinafter are referred to as arrayed before the Tribunal below for the sake of convenience in the appeal.

The brief facts of the case are as follows:

On 24.10.2001 while the claimant was proceeding on his Scooter bearing No.AP-1-C-6408 from Jam Village to Nirmal, on the way near Ramannagandi, at about 3.30 p.m. a jeep bearing No.AP-25-F-1686 driven by its driver at high speed and in a rash and negligent manner, dashed the scooter of the claimant. As a result of which, the claimant fell down and received fracture to Nose and injuries to head. Immediately, he was taken to Government Hospital, Nirmal, after first aid he was referred to Government Hospital, Nizamabad. Later, he was shifted to SVR Super Speciality Hospital for better treatment. The claimant incurred a sum of Rs.30,000/- as medical expenses. In respect of the above incident, a criminal case was registered in Crime No.64 of 2001 of Nirmal Rural P.S. against the driver of jeep, police investigated

into the matter and filed a charge-sheet against the driver of the crime vehicle. Ex.A-2 is the copy of the charge sheet. By the date of accident, the claimant was earning Rs.4,000/- p.m. and due to the injuries suffered by him, he could not work for two months and he was also suffered both physical and mental agony. Since the accident took place due to rash and negligent driving by the driver of the crime vehicle, the claimant filed O.P.No.590 of 2002 against the respondents 1 and 2, on the file of the Motor Vehicle Accidents Claims Tribunal-cum-District Judge, Adilabad, under Section 166 (1) (a) and 163 (A) of the Motor Vehicles Act, claiming compensation of Rs.1,50,000/- for the injuries sustained by him in the said accident.

The 1st respondent, owner of the vehicle, remained *ex parte* before the Tribunal. The 2nd respondent-Insurance Company filed counter denying the allegations made in the petition and attributed negligence to the claimant, who is driver of the scooter, and sought for dismissal.

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

- (1) Whether the accident dated 24.10.2001 occurred out of the use of the motor vehicle of R-1 i.e., bearing AP-25-F-1686?
- (2) Whether the petitioner is entitled to any compensation? If so, to what amount and against which of the respondents?
- (3) To what relief?

The only point that arise for consideration is whether the compensation of Rs.26,345/- awarded by the Tribunal is reasonable, just and fair.

In support of the claimant, P.W.1 was examined and Exs.A1 to A10 documents were marked. On behalf of the respondents, no oral or documentary evidence was adduced. After considering the oral and

documentary evidence available on record, the Tribunal below held that the accident took place due to rash and negligent driving of the Jeep bearing No.AP-25F-1686 and by treating the injuries sustained by the claimant i.e., one grievous injury and five simple injuries and awarded compensation of Rs.10,000/- for one grievous injury; Rs.5,000/- for five simple injuries @ Rs.1,000/- each; Rs.10,345/- towards medical expenses; and Rs.1,000/- towards transportation charges, thus totalling to Rs.26,345/-. Not being satisfied with the quantum of compensation, the claimant preferred the present appeal.

The learned counsel for the appellant submits that the tribunal below has not awarded compensation towards pain and suffering and attendant charges. He further submits that the claimant furnished medical bills to a tune of Rs.29,500/-, but the tribunal has awarded Rs.10,345/- towards medical expenses. He also further submits that the claimant suffered one grievous injury and five simple injuries and he undergone treatment in the hospital and thereafter he could not attend to his job for about two months, and, therefore claims enhancement of compensation.

No representation on behalf of the learned counsel for the Insurance Company/respondent No.2.

Having regard to the facts and circumstances of the case and considering the nature of the injuries suffered by the claimant i.e., one grievous and five simple injuries, and taking into consideration the documents Exs.A-1 to A-10, which includes bunch of medical bills and medical prescriptions and attested copy of injury certificate, discharge card, CT scan report and other documents, it is obvious that the claimant has suffered mentally and physically, he is entitled to Rs.10,000/- (Rupees Ten thousand only) towards pain and suffering;

Rs.5,000/- (Rupees Five thousand only) towards attendant charges, and Rs.5,000/- (Rupees Five thousand only) towards loss of earnings for two months. Regarding the medical expenses, the tribunal has awarded compensation of Rs.10,345/- as against Rs.29,500/- and no reasons are assigned by the Tribunal for not awarding the entire amount spent by the claimant towards medical expenses, therefore, I do not see any valid ground to concur with the findings of the tribunal. Hence, the petitioner is entitled for the entire claim of Rs.29,500/- towards medical expenses.

In the result, the Appeal is allowed in part. The compensation of Rs.26,345/- (Rupees Twenty Six thousand three hundred and forty five only) as awarded by the Tribunal is enhanced to Rs.65,500/- (Rupees Sixty five thousand and five hundred only) with interest at 7.5% per annum from the date of claim petition till the date of realization against both the respondents with joint and several liability. The respondents shall deposit the said amount within one month from the date of this order. Thereafter, the claimant is permitted to withdraw 50% of the amount at the first instance and the remaining amount after three months. There will be no order as to costs.

Consequently, miscellaneous petitions, if any, pending in this appeal shall stand closed.

G. Shyam Prasad, J

Date: 27.10.2016
GBS