

THE HON'BLE SMT. JUSTICE ANIS

CIVIL MISCELLANEOUS APPEAL NO. 4250 OF 2004

JUDGMENT:

This appeal is filed by the appellant/petitioner under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the award dated 24.08.2004 passed by the Motor Accident Claims Tribunal-cum-IV Additional Chief Judge, City Civil Court, Hyderabad, in O.P.No.241 of 2003, awarding compensation of Rs.35,360/-.

2. The claimant filed the above O.P under Section 166 of the Act, claiming compensation of Rs.2,00,000/- on account of the injuries sustained by him in a motor vehicle accident.
3. For the sake of convenience, the parties are referred to as arrayed in the O.P. before the Tribunal.
4. The brief averments made in the petition are as follows:

On 11.09.2002 at about 5.05 p.m. while the petitioner was proceeding on foot on the left side of the road near Hariharananda Medical Hall, Madannapet, a Maruti Car bearing No.AP9G 4989 came from behind driven by its driver in a rash and negligent manner with high speed and dashed the petitioner, due to which he sustained fracture of both bones of his right leg and multiple injuries all over the body. Immediately, the petitioner was shifted to Osmania General Hospital, Hyderabad and admitted as inpatient.

The Police, Madannapet P.S. registered the same as a case in Crime No.114 of 2002 under Section 337 IPC against the driver of Maruti Car.

The petitioner stated that he was working as a Marketing Executive in M/s.Swetha Placement Services at Dilsukhnagar, Hyderabad and drawing a monthly salary of Rs.5,000/-. He further stated that he is the only earning member of his family and now he has no job to eakout his livelihood. According to him, he spent more than Rs.20,000/- towards medical expenses, as such he filed the present petition claiming Rs.2 lakhs as compensation against both the respondents.

5. The respondent No.1 remained ex parte before the Tribunal.

6. The brief averments made in the counter filed by the respondent No.2 before the Tribunal are as follows:

The respondent put the petitioner to prove the manner of accident, age and income of the petitioner. The respondent also put the petitioner to prove that he has spent Rs.20,000/- towards medical expenses and that the driver of the offending vehicle was holding a valid and subsisting driving licence at the time of accident. It is further stated that the claim of the petitioner is high, excessive and exorbitant and prayed the Court to dismiss the petition.

7. Basing on the pleadings, the Tribunal framed three issues and to substantiate the claim, petitioner himself examined as PW1 and also examined Dr. K.Nagamuneendrudu as PW2 and got marked Exs.A.1 to A.9. On behalf of the second respondent, no oral evidence was adduced, but got marked Ex.B.1 by consent.

8. The Tribunal, after considering the oral and documentary evidence, held that the accident occurred due to rash and negligent driving of the driver of Maruti Car bearing No.AP9G 4989 and awarded compensation of Rs.35,360/- along with interest at 9% per annum against both the respondents.

9. Not satisfied with the award passed by the Tribunal, the appellant/petitioner preferred the present appeal.

10. The main contention of the learned counsel for the appellant/petitioner is that the Tribunal had not considered the disability suffered by the petitioner and no compensation was awarded on that aspect, and therefore, prayed the Court to enhance the compensation.

11. On the other hand, the learned counsel for the insurance company argued that the petitioner has not produced any disability certificate. It is further argued that PW2 is the doctor who assisted the treating surgeon for conducting operation, therefore his opinion cannot be taken

into consideration. It is also argued that the compensation awarded by the Tribunal is just and reasonable and prayed the Court to dismiss the appeal.

12. Having regard to the submissions made by both the learned counsel, the points that arise for consideration are:

1. Whether the appellant/petitioner is entitled for enhancement of compensation?
2. Whether the compensation awarded by the Tribunal is just and reasonable?

13. **Points:**

A perusal of the record shows that there is no dispute that on 11.09.2002 at about 5.05 p.m. while the petitioner was proceeding on foot on the left side of the road, the offending Maruti Car bearing No.AP9G 4989 driven by its driver came from behind in a rash and negligent manner and dashed the petitioner, due to which the petitioner suffered injuries. The police, Madannapet P.S. registered a case in Crime No.114 of 2002 against the driver of the offending Car. The Tribunal, after considering the evidence of PW1 coupled with the documentary evidence, held that the accident occurred due to rash and negligent driving of the driver of the Car and that finding needs no interference.

14. Coming to the quantum of compensation, the Tribunal, after considering the evidence of PWs 1 and 2, held that the petitioner suffered closed fracture both bones of right leg

lower 1/4th and awarded Rs.30,000/- towards pain and suffering and also for the injury sustained. The Tribunal also awarded Rs.1760/- towards medical expenses, Rs.2,000/- towards extra nourishment and Rs.1,000/- towards transport charges besides Rs.600/- towards attendant charges as the petitioner was treated as inpatient for six days in Osmania General Hospital. Thus, in total, the Tribunal awarded an amount of Rs.35,360/- to the petitioner along with 9% interest per annum.

15. The main contention of the appellant/petitioner is that the Tribunal has not considered the disability. In fact, no disability certificate was filed by the petitioner. Further, the doctor who conducted operation was not examined and Ex.A.5 Medical opinion certificate cannot be considered as it is not a disability certificate issued by the competent medical board. Considering all these aspects, the Tribunal rightly awarded just and reasonable compensation and the appellant/petitioner has not made out any case to interfere with the findings of the Tribunal and the said findings need no interference by this Court.

16. Accordingly, the appeal is dismissed. No order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

(ANIS, J)

14.09.2016
Anr

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