

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

C.M.A.NO.3590 OF 2003

JUDGMENT:

This appeal is preferred by the appellant-Insurance Company against the order, dated 07-01-2003 in O.P.No.518 of 2002 on the file of the M.A.C.T.-cum- I Additional District Judge, Warangal (for short 'the Tribunal') wherein an amount of Rs.1,07,500/- was awarded as against the claim of Rs.1,30,000/-..

2. The appellant herein is the 2nd respondent, whereas the 1st respondent herein is the petitioner and the 2nd respondent herein is the 1st respondent before the Tribunal.

3. For the sake of convenience, the parties herein after will be referred to as they were arrayed before the Tribunal.

4. Petitioner filed the above O.P. claiming compensation of Rs.1,30,000/- for the injuries sustained by him in the accident that occurred on 24-02-2002 at about 5.30 P.M.. It is alleged in the petition that the petitioner was working in the postal department and he came to Humankinds from Peddapally, Karimnagar District to visit his brother at Municipal Office Headquarters on a scooter. When he reached near Nakkalagutta petrol pump and was proceeding on the extreme left side of the road, an auto bearing No. AP 36 U 6412 which was proceeding from Hanamkonda to Kazipet, lost control over it and hit the scooter from backside, as a result of which, the petitioner who was travelling as a pillion rider fell down from the scooter and received fracture injuries in the said accident. Hence, the claim petition.

5. 1st respondent-owner of the vehicle remained ex-parte. The 2nd respondent-Insurance Company filed counter denying the averments made in the petition and stated that the accident took place on account of rash and negligence on the part of the brother of the petitioner who was riding the vehicle and there was no negligence on the part of the driver of the auto. The petitioner has no disability and he is attending to his employment and there is no loss caused to the petitioner. The amount claimed by the petitioner is excessive and there is violation of policy conditions.

6. Basing on the above pleadings, the following issues were settled for trial:

1. Whether the accident took place on account of the rash and negligent driving of the auto by its driver belonging to the 1st respondent or due to the rash and negligence on the part of the brother of the petitioner resulting in disability to the petitioner?

2. Whether the petitioner is entitled to compensation and if so, to what amount and from whom?

3. To what relief?

7. The petitioner himself was examined as P.W.1 and also examined the doctor who treated him as P.W.2 and marked Exs.A1 to A8. On behalf of the 2nd respondent, no evidence either oral or documentary was adduced.

8. On the basis of the oral and documentary evidence, the Tribunal held that the accident occurred due to rash and negligent driving of the auto by its driver.

9. Regarding compensation, the Tribunal noticed that as per Ex.A2-wound certificate, the petitioner sustained fracture of right tibia, fracture great toe right side with abrasions over right knee and right great toe. An operation was performed on the petitioner on 27-02-2002 and he was discharged on 04-03-2002 with an advice to take bed rest for 3 months. Again he was admitted on 22-04-2002 and was discharged on 30-04-2002. He was advised to take bed rest for two months. The doctor stated that the petitioner was having 10% disability, which is permanent in nature. The Tribunal awarded an amount of Rs.27,500/- towards medicines and extra nourishment, Rs.10,000/- towards pain and suffering, Rs.30,000/- towards loss of earnings and Rs.40,000/- towards continuing and permanent disability. Thus in all, an amount of Rs.1,07,500/- was awarded by the Tribunal vide impugned order.

10. This appeal is filed challenging the said award only on the ground that subsequent to passing of the award, it has come to the notice of the appellant that in several cases including the present case, initially the driver was said to have been absconding and later on one Boli Bikshapathy was introduced as driver and in all the cases one Ajay Kumar, Advocate appeared for the claimant. But the said ground cannot

be taken into consideration in the absence of proper evidence and merely on the basis of the grounds raised in the appeal. The injuries sustained by the petitioner were evidenced by Ex.A2. In the light of the injuries, it cannot be said that the award is unjust. In view of the same, the appeal fails and is liable to be dismissed.

11. Accordingly, the appeal is dismissed confirming the order, dated 07-01-2003 in O.P.No.518 of 2002 passed by the Tribunal. No order as to costs. Miscellaneous petitions, if any pending in this appeal shall stand closed.

A.RAMALINGESWARA RAO, J

DATED: 03-02-2016

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