

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1444 OF 2009

JUDGMENT:

M/s. New India Assurance Company Limited, represented by its Branch Manager, Hyderabad and its Divisional Manager, Warangal, respectively, arrayed as respondent Nos.2 and 3 in O.P. No.610 of 2006, on the file of the Chairman, Motor Accident Claims Tribunal - cum - IV Additional District Judge, Warangal (for short 'the Tribunal'), preferred the instant appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act') challenging the order and decree, dated 15-12-2006; whereby and where-under, a compensation of Rs.2,15,700/- was granted with interest at 7.5% per annum as against the claim of Rs.2,65,000/- laid under Section 166 of the Act read with Rule 455 of the Andhra Pradesh Motor Vehicle Rules, 1989, for the injuries sustained by the petitioner, a minor boy on the date of accident, represented by his father as next friend; mainly on the ground that the compensation awarded is excessive and arbitrary.

2. Respondent No.2 and the appellants herein, who are owner and insurer of an auto rickshaw bearing registration No.AP 36V 341, respectively, are respondent Nos.1 to 3, while respondent No.2 is the petitioner in OP before the Tribunal.

3. For the sake of convenience, the parties herein are referred to as they were arrayed in the OP.

4. The facts would reflect that the petitioner, aged 10 years, pursuing his studies in the school, resident of Desaipet, Warangal, on 16-12-2005 was returning from Sai Public School by boarding an auto rickshaw bearing registration No.AP 36V 341 and when it reached Andhra Balika Junior College lane, Battala Bazar, Warangal, since its driver drove it in a rash and negligent manner at high speed, he lost control over the same, due to which, it turned upside down, resulting in grievous injuries sustained by the petitioner. He was shifted to Lifeline Hospital, Hanamkonda, where he was treated as in-patient.

i) The concerned police officials registered a crime against the driver of the auto rickshaw. The petitioner claims that he sustained posterior dislocation of left thigh and avulsion injury on the bladder neck with Intra-peritoneal Seepage of urine and abrasion on the left thigh.

ii) He claims that the petitioner was treated as in-patient from 16-12-2005 to 31-01-2006 and again he was readmitted on 24-01-2006 and discharged on 28-01-2006 and underwent yet another surgical intervention on 25-01-2006, and again he was readmitted on 30-01-2006 and discharged on 03-02-2006 with an advice to take complete bed rest for six months.

iii) Claiming that he suffered great pain, both, mental and physical agony and expended Rs.80,000/- towards medical expenses, Rs.5,000/- towards extra nourishment, Rs.5,000/- towards transport

charges and Rs.40,000/- towards treatment and lost an academic year completely, sought Rs.2,65,000/- from respondents, who are owner and insurer of the auto rickshaw.

5. Respondent Nos.1 and 2, who are owner and insurer of the Hyderabad branch, remained *ex parte*.

6. Respondent No.3 - insurer of Divisional office at Warangal, filed its counter opposing the claim stating that the auto rickshaw was not responsible for the accident that took place on 16-12-2005, and that there was negligence entirely upon the petitioner himself and the present claim petition was filed in collusion with respondent No.1 to cause loss to the Insurance Company. The documents filed by the petitioner are concocted and the petitioner did not receive any injuries, nor incurred any medical expenses. The claim made by the petitioner is exorbitant and sought to dismiss the claim petition.

7. On the basis of rival pleadings, three issues were framed to determine the compensation and the liability of the respondents.

8. On issue No.1, the Tribunal having found from the contents of Ex.A-1, first information report, and Ex.A-3, charge sheet, recorded a finding favouring the petitioner.

i) On issue No.2, holding that for 50 days the petitioner was treated as in-patient and taken follow up treatment for six months, granted Rs.63,200/- towards medical expenses basing on Ex.A-7;

Rs.5,000/- towards transportation charges; Rs.5,000/- towards extra nourishment; towards future medical expenses, a sum of Rs.20,000/- @ Rs.10,000/- per year for two years was granted as against Rs.40,000/-; Rs.1,00,000/- was granted towards pain and suffering basing on the evidence of PWs.2 and 3 and the injury sustained by the petitioner was abnormally grave one subjecting him to cause lot of pain, mental agony and shock etc; deducting 10% disability basing on the evidence of PW.3, a Neurosurgeon and the evidence of PW.2, an Orthopaedic Surgeon, taking the notional income at Rs.15,000/- per annum, arrived at Rs.22,500/-, thus, granted a total compensation of Rs.2,15,700/-.

9. The aforesaid order is under challenge, mainly, the Insurance Company questioned the amounts of Rs.1,00,000/- granted towards pain and suffering; Rs.20,000/- towards future medical expenses awarded by the Tribunal. So far as other amounts granted by the Tribunal are concerned, they are not seriously contested.

10. Heard Sri Katta Laxmi Prasad, learned counsel for the appellants - respondent Nos.2 and 3, and Sri A. Ravinder, learned counsel for respondent No.1 - petitioner. Though, service of notice was completed on respondent No.2 - respondent No.1, none appears for him.

11. The learned counsel for the appellant would submit that the Tribunal was not right in granting Rs.1,00,000/- towards pain and suffering though, permanent disability was estimated taking the percentage of disability at 10% and, in fact, the evidence of PW.3 would show that two injuries were suffered by the petitioner, as in his chief examination he states that PW.2 has treated the second injury, whereas he treated the first injury by relocating the hip joint, which was dislocated in the accident. He states about the admission of the petitioner on three occasions and underwent treatment as in-patient. However, PW.2 admits in his cross-examination that on the third occasion, the petitioner was re-admitted due to enteric fever, and the same has nothing to do with the post operation complications. Of course, PW.3 states in his cross examination that on the third occasion the petitioner was admitted for urological problem. No doubt, certain inconsistency did occur in the evidence of PWs.2 and 3, but the same are minor ones without affecting core issues. Thus, the following factors would really become relevant in assessing whether Rs.1,00,000/- granted towards pain and suffering can be justified.

- i) At least 50 days the petitioner was treated as in-patient though, not continuously but intermittently;
- ii) The very fact that PW.2's evidence would show that he conducted surgery on the abdomen of the petitioner and repaired the bladder injury;

- iii) Still, he has been attending the petitioner on the day when he deposed in Court i.e., 14-11-2006.
- iv) When kept in view, that the petitioner was 10 years old and undergoing two surgeries, out of which, one was major even according to the evidence of doctor and the other is relocation of hip joint, which certainly, would take at least 4 to 6 months for him to get nearer to normalcy though not regaining perfect health as hitherto he was maintaining.
- v) On account of surgical interventions, the studies of the boy would invariably have been disturbed putting him under some trauma.

Therefore, when kept in view, the above circumstances, more particularly, the amount of Rs.1,00,000/- granted towards pain and suffering cannot be construed as excessive or arbitrary, more particularly, when the loss of future capacity assessed by the Tribunal was only to the tune of Rs.22,500/- by taking notional income. Therefore, there is no merit in the stand taken by the Insurance Company that the amount of Rs.1,00,000/- granted towards pain and suffering is arbitrary.

12. Turning to Rs.20,000/- granted towards future medical expenses, the assertion of PW.2 that even 11 months after the

incident, he was attending to PW.2 for follow up treatment is sufficient to justify the amount of Rs.20,000/- granted by the Tribunal towards future medical expenses. Certainly, the Tribunal cannot be faulted in awarding the said sums. The other amounts granted by the Tribunal i.e., Rs.63,200/- is based on documentary evidence towards medical expenses; Rs.5,000/- towards transport charges is reasonable and Rs.5,000/- granted towards extra nourishment appears to be on lower side when kept in view the nature of injuries sustained by the petitioner and the sufferance he had undergone. Therefore, absolutely there is no merit in the present appeal.

13. Accordingly, the appeal is dismissed. There shall be no order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in this appeal, stand disposed of.

A. SHANKAR NARAYANA, J

August 22, 2016.

Mgr