

HON'BLE SMT JUSTICE ANIS

M.A.C.M.A. No. 5506 OF 2008

JUDGMENT:

This appeal is filed by the appellant/respondent No.2 under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the Award, dated 31.01.2008, in O.P.No.239 of 2006, passed by the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Karimnagar at Jagtial.

2. The claimant filed the above O.P. under Section 166 (1) (a) of the Act claiming compensation of Rs.5,00,000/- on account of injuries sustained by him in a road accident.

3. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the Original Petition.

4. The brief averments made in the petition are that on 17.01.2005 the petitioner along with his friend went to Godavarikhani on personal work and in the evening while they were proceeding to Basanthnagar on Hero Honda Motorcycle bearing No.AP-15-9344, being driven by the claimant, at about 2130 hours when they reached the outskirts of Kundanapalli near IOC petrol bunk, the Auto rickshaw bearing No.AP-1-U-9043 came in opposite direction, being driven by its driver, with high speed and in a rash and negligent manner, dashed the motorcycle, due to which the claimant and his friend fell down and claimant sustained injury to his left eye, nose, face and both side ribs besides other bleeding injuries all over the body. Immediately after the accident, the claimant was shifted to Surya Nursing Home, Godavarikhani, where he underwent treatment. On the next day, for

better treatment, he was shifted to Yashoda Hospital, Hyderabad, where he underwent surgery. He took treatment as inpatient from 18.01.2005 to 01.02.2005 for a period of 15 days. Thereafter, also he took treatment as outpatient for a period of six months. Due to the accident, his left eye was completely removed and nose bridge was completely damaged and it was repaired temporarily by inserting implants. Due to the accident, he lost space in between eyebrows and forehead and developed disfigurement on face. He incurred an amount of Rs.2,00,000/- for treatment, extra nourishment, transportation charges, medicines, hospital charges etc. Due to the accident, he lost eye sight and disability was estimated at 50%. At the time of accident, the claimant was aged about 32 years and working as Auto driver and earning a sum of Rs.3,000/- per month and contributing the same to the family. Police, Ramagundam registered a case in crime No.13 of 2005 against the driver of the auto for the offence punishable under Section 338 IPC. According to the claimant, both the respondents are jointly and severally liable to pay the compensation.

5. The first respondent remained *ex parte* before the Tribunal.

6. The brief averments made in the written statement filed by the second respondent are that the respondent put the claimant to prove the manner of accident, age, income, injuries received in the accident and treatment taken by him in various hospitals and the amount spent towards treatment. The accident was occurred due to negligence of the claimant only; that the claimant is not having valid and effective driving licence to drive the motorcycle; and that the compensation claimed by the claimant is high and excessive and prayed to dismiss the petition.

7. Basing on the above pleadings, the Tribunal framed three issues and to substantiate the claim, PWs 1 to 7 were examined and got marked Exs.A.1 to A.39. On behalf of the respondents, R.W.1 was examined and Exs.B.1 and B.2 were marked.

8. Basing on the oral and documentary evidence available on record, the Tribunal held that the accident occurred due to rash and negligent driving of driver of Auto rickshaw bearing No.AP-1-U-9043 and awarded compensation of Rs.3,35,000/- with interest @ 8.5% per annum. Aggrieved by the same, the appellant/respondent No.2 filed the present appeal.

9. Learned counsel for the appellant argued that the compensation granted by the Tribunal is very high and excessive. He further argued that the Tribunal granted interest 8.5% per annum, which is excessive and the same may be reduced in view of judgment of Hon'ble Supreme Court.

10. Learned counsel for the respondents argued that the Tribunal after considering the oral and documentary evidence, awarded just and reasonable compensation. He further argued that, the claimant was auto driver and earning Rs.2,000/- per month and the Tribunal has rightly taken the income of the of the claimant at Rs.2,000/- per month and the said finding needs no interference as the second respondent has not produced any contra evidence.

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

- 1) Whether the Award passed by the Tribunal is legal and sustainable?
- 2) Whether the compensation awarded by the Tribunal is just and proper?
- 3) Whether the interest granted by the Tribunal is on higher side?

12. **POINTS:**

On perusal of evidence of P.W.1 and Ex.A.1 and A.2, there is no dispute that on 17.01.2005 the accident occurred due to rash and negligent driving of driver of auto rickshaw bearing No.AP-1-U-9043, in which the claimant sustained grievous injuries. P.W.1 in his evidence stated that in the accident he sustained injury to his left eye and nasal bridge was completely damaged and it was repaired temporarily by inserting implants. Initially, the claimant was taken treatment at Surya Nursing Home, Godavarikhani and thereafter, for better treatment, he was shifted to Yashoda Hospital, Hyderabad, where he took treatment for a period of 15 days i.e., from 18.01.2005 to 01.02.2005. To prove the injuries and disability suffered by the claimant, P.Ws.2 to 6 were examined and they categorically supported the evidence of P.W.1. After considering the evidence of P.Ws.1 to 7 and Ex.A.1 to A.39, the Tribunal rightly taken into consideration the income of the claimant at Rs.2,000/- per month and taken disability at 40% and awarded compensation of Rs.3,35,000/-. The said compensation is just and reasonable and said finding of the Tribunal needs no interference.

13. The main grievance of the appellant is that the Tribunal awarded the rate of interest at 8.5% per annum and it has to be reduced to 7.5% per annum in view judgment of Hon'ble Supreme Court reported in ***Sanobanu Nazirbhai Mirza and Others V. Ahmedabad Municipal Transport Service***¹ and ***Rebeka Minz and others v. Divisional Manager, United India Insurance Company Limited and another***².

14. Considering the facts and circumstances of the case and in view of the settled law of the Hon'ble Apex Court, I am of the view that the rate of interest shall be reduced from 8.5% per annum to 7.5% per annum from the date of appeal till the date of realisation.

15. Accordingly, the appeal is partly allowed confirming the quantum of compensation awarded by the Tribunal, but reducing the rate of interest awarded by the Tribunal from 8.5% per annum to 7.5% per annum from the date of appeal till the date of realisation. There shall be no order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

ANIS, J

Date: 25.11.2016
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¹ 2013 ACJ 2733

² 2012 ACJ 2328

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