

HON'BLE SRI JUSTICE A. SHANKAR

NARAYANA

M.A.C.M.A. No.1603 OF 2005

-

JUDGMENT:

The instant appeal is preferred by the petitioner having been dissatisfied with the award of Rs.1,75,000/- as compensation by the order and decree, dated 21-10-2003, in O.P. No.237 of 1996, on the file of the Chairman, Motor Accident Claims Tribunal - cum -

II Additional District Judge, West Godavari District at Eluru (for short 'the Tribunal') as against the claim of Rs.2,50,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') read with Rule 455 of the Andhra Pradesh Motor Vehicles Rules, 1989, though, originally made the claim for Rs.1,50,000/-, seeking enhancement, but, however, not challenged the order of dismissal against respondent Nos.1 and 2 made by the Tribunal.

2. Appellant No.1 herein is the petitioner and respondent Nos.1 to 3, who are driver, owner and insurer of lorry bearing registration No.AP 26V 5767, respectively, are respondent Nos.1 to 3, respectively in O.P. before the Tribunal.

3. For the sake of convenience, the parties are

hereinafter referred to as they were arrayed in the O.P. before the Tribunal.

4. The facts would show that on 23-04-1996 at about 10.00 a.m., the petitioner started on his motor cycle (Suzuki Samurai) bearing registration No.AP 5D 4737 to go to Undrajavaram on his business, and when he reached the outskirts of Mutyalambapuram, a lorry bearing registration No.AP 26V 5767 came in opposite direction driven at high speed in a rash and negligent manner, hit the motor cycle, due to which, the petitioner sustained serious injuries. He was immediately taken to hospital where he was treated as in-patient for 14 days, and again he was shifted to Government Hospital, Vijayawada, where he claims that he was treated for one month and, thereafter, she was shifted to Kavey Hospital, Eluru, where he got treated himself for some time and he was unconscious for the period from 23-04-1996 to 06-06-1996, and claims that he spent huge amounts towards medical expenses and thereby, sought to grant the aforesaid amount.

5. Somehow, the claim petition was dismissed against respondent Nos.1 and 2, who are driver and owner of the lorry, by the Tribunal. The reason therefor is not forthcoming in the order under challenge.

6. Respondent No.3 - Insurer alone contested the claim by filing its counter opposing the claim, seeking exoneration.

7. Based on the pleadings, the Tribunal framed three issues about fixing the responsibility for the accident.

8. During inquiry before the Tribunal, the petitioner examined himself as PW.1, besides examining the doctors as PWs.2 to 3, and exhibited Exs.A-1 to A-5, besides marking Exs.X-1 to X-9 by getting them summoned from the hospital. On behalf of respondent No.3, no witnesses were examined and no documents were filed.

9. On issue No.1, the Tribunal recorded a finding favouring the petitioner. On issue No.2, the Tribunal having found that the petitioner sustained four grievous injuries and seven simple injuries at the rate of Rs.20,000/- for each grievous injury and Rs.5,000/- for each simple injury, arrived at Rs.80,000/- and Rs.35,000/- respectively. Besides the same, the Tribunal also granted Rs.5,000/- towards loss of earnings; Rs.20,000/- towards medical expenses and Rs.35,000/- towards pain and suffering, making a total of Rs.1,75,000/- as compensation

with interest at 12% per annum on Rs.1,50,000/- from 14-08-2002 till 30-06-2003 and on Rs.1,75,000/- from 01-07-2003 onwards. On perusal of order, the Tribunal wrongly calculated the total amount as Rs.1,70,000/- instead of Rs.1,75,000/- and it is taken as Rs.1,75,000/-.

10. The aforesaid order which is under challenge in the instant appeal contending that the Tribunal has not appreciated the evidence on record and that the Tribunal ought to have granted the interest from the date of petition till realization and, therefore, sought to grant the balance amount with interest from the date of petition till realization.

11. Heard Sri Ch. Dhanamjaya, learned counsel for the appellants and Sri V. Krishna Rao, learned standing counsel for respondent No.3 - Insurer. In fact, it is endorsed in the cause title of the memorandum of grounds of appeal that respondent Nos.1 and 2 were not necessary parties.

12. Perused the order and the material on record, both, oral and documentary, let in by the parties.

13. The learned counsel for respondent No.3 - Insurance Company, would submit that, in fact, there has been arithmetic error in calculating the total amount which works out to Rs.1,75,000/-, but not Rs.1,70,000/- and, therefore, the same may be granted, and also in view of the fact, that the petitioner is no more and his legal

representatives have come on record during pendency of the appeal. The learned counsel for appellants also would submit the same.

14. The instant appeal is not insisted against respondent Nos.1 and 2, though, the claim petition itself was dismissed by the Tribunal against respondent Nos.1 and 2. During pendency of the instant appeal, the petitioner died and his legal representatives were brought on record as appellant Nos.2 to 4. In the said circumstances, the appellants are not entitled to any enhancement being the legal representatives of the deceased appellant, as they can only succeed to the estate of the deceased. Therefore, the order under challenge can be confirmed irrespective of the fact that the claim petition was dismissed against respondent Nos.1 and 2.

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

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

A. SHANKAR NARAYANA J.

March 18, 2016.

Mgr