

HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A. No. 185 OF 2006

JUDGMENT:

1. This Appeal is arising out of the order, dated 13.05.2005, in Original Petition No.204 of 2000, on the file of the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge (FTC), Adilabad (for short, 'the Tribunal').

2. Respondent No.1 herein, who was petitioner before the Tribunal, has filed the Petition under Sections 166(1)(a) and 163-A of the Motor Vehicles Act, 1988 (for short, 'the Act') claiming compensation of Rs.2,00,000/-.

3. The brief facts leading to filing of O.P. No.204 of 2000 are as follows:

On 01.08.1999, at about 12:30 p.m., while the petitioner was coming towards Godavarikhani from CCC Naspur on his scooter bearing No.AP1B-6881 and when he reached near Indaram bus stop, respondent No.2 came from his back side, on his scooter bearing No.AP36B-5102, driven in a rash and negligent manner and dashed against the scooter of the petitioner. The petitioner fell down and received multiple fractures, on his upper and lower limbs, and became unconscious. Immediately, he was shifted to Hospital at Mancherla for treatment. The petitioner had undergone treatment in various hospitals, nearly for a period of three months, and incurred an amount of Rs.50,000/-. In spite of the treatment, he could not restore normal stage.

4. Respondent Nos.1 and 2 did not file any counter. However, Respondent No.1 obtained permission to take defence along with Respondent No.3, under Section 170 of the Act.

5. Respondent No.3, insurer of the scooter bearing No.AP36B 5102, filed counter, opposing the claim.

6. On the basis of pleadings, the Tribunal framed the following issues:

- 1) Whether the claimant sustained injuries in the accident occurred on 01.08.1999 out of use of vehicle No.AP36B-5102 belonging to the respondent No.2?
- 2) Whether the claimant is entitled to any compensation? If so, to what amount?
- 3) To what relief?

7. During the course of trial, on behalf of the petitioner, PWs.1 and 2 were examined and Exs.A-1 to A-23 were marked. On behalf of the respondents, none were examined and no documents were marked.

8. The Tribunal, upon hearing argument of both the counsel, considering oral and documentary evidence available on record, awarded compensation of Rs.85,000/- under various heads as against the claim of the petitioner for Rs.2,00,000/-.

9. Being aggrieved by the excess compensation awarded by the Tribunal, this Appeal is preferred by the appellant-insurance company.

10. Heard Mr. N.S. Bhaskar Rao, learned counsel for the appellant-insurance company, and Mr. S. Surender Reddy, learned counsel for respondent No.1-petitioner.

11. Considering rival contentions and perusing the material available on record, the sole point that arises for consideration in this Appeal is;

Whether the compensation awarded by the Tribunal is excessive? If so, the award is liable to be modified?

12. POINT: This Appeal is filed by the insurance company-respondent No.3 being aggrieved by the excess compensation of Rs.85,000/- awarded by the Tribunal.

13. Learned counsel for the appellant-insurance company submits that the compensation awarded by the Tribunal is highly excessive. The Tribunal Awarded Rs.20,000/- towards pain and suffering and Rs.30,000/- towards the injuries sustained by the petitioner. The two heads pain and suffering and injuries go together. Awarding of Rs.20,000/- towards pain and suffering is not contemplated under the Act and, therefore, that amount has to be deducted from the award.

14. As a matter of fact, the contention raised by the appellant-insurance company does not hold good for the reason that there is a specific head under the Act for providing compensation towards pain and suffering, apart from providing for the injuries. Therefore, the Tribunal has rightly awarded the compensation for pain and

suffering and for the injuries separately. In fact, in this case, the petitioner had received the following injuries:

- 1) Fracture (left) neck of left radius; and
- 2) Fracture greater tuberosity right humerus.

15. The evidence of PW.2, Medical Officer, in the report would clinchingly prove that the petitioner has got difficulty in complete supination of his fore-arm. It is also proved from his evidence that the petitioner-1st respondent herein had undergone two months treatment in the hospital as in patient. The evidence of this witness clearly proves the fact that the petitioner had undergone pain and suffering due to the injuries received by him, at the time of accident, during treatment, and thereafter also. Therefore, awarding compensation of Rs.20,000/- towards pain and suffering by the Tribunal is perfectly justified and it does not require any interference.

16. Learned counsel for the appellant-insurance company submits that for the two grievous injuries the Tribunal has awarded Rs.30,000/- instead of Rs.10,000/-. The Tribunal considered the matter and based on evidence and other material facts in the Petition had rightly awarded the compensation of Rs.30,000/- for two grievous injuries.

17. Therefore, viewed from any angle, I do not see any valid grounds to interfere with the well reasoned order passed by the Tribunal in awarding compensation of Rs.30,000/- for the two

grievous injuries and Rs.20,000/- towards pain and suffering of the petitioner.

18. In the result, the Civil Miscellaneous Appeal is dismissed.

19. As a sequel to dismissal of the Appeal, miscellaneous petitions, if any, pending in this Appeal shall stand dismissed as infructuous. No order as to costs.

G. SHYAM PRASAD, J

Date: 11.11.2016.

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