

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1574 of 2009

JUDGMENT :

The instant Civil Miscellaneous Appeal is preferred by the appellant-petitioner aggrieved by the judgment and decree dated 26.03.2008, passed in O.P.No.859 of 2006 by the Chairman, Motor Accidents Claims Tribunal (District Judge), Nizamabad District (for brevity "the Tribunal"), whereby and whereunder a sum of Rs.1,04,641/- was awarded towards compensation with interest @ 7.5% per annum, as against the claim of Rs.2,00,000/-, laid under Section 166 (1)(a) of the Motor Vehicles Act, 1988, for the injuries sustained by him in a motor accident that occurred on 06.05.2006 at about 6-00 p.m., near Yellamma Temple on Sircilla Road, Kamareddy, Nizamabad District, seeking enhancement of compensation.

2. The appellant herein is petitioner, respondent No.1 - owner of offending Auto bearing No.AP-15/W-5923 is respondent No.1; and respondent No.2 – Oriental Insurance Company Limited, who is the insurer of the offending vehicle, is respondent No.2 in O.P.No.859 of 2006. For the sake of convenience, the parties are referred to as they are arrayed in O.P.No.859 of 2006 before the Tribunal.

3. The fact situation, the manner in which the accident had occurred and the injuries sustained by the petitioner are not in dispute. The only dispute is that the compensation awarded by the Tribunal is very low.

4. Sri Ch. Janardhan Reddy, learned counsel for the appellant/petitioner, contends that the Tribunal, though granted a

sum of Rs.45,000/- towards disability sustained by the appellant/petitioner, has not resorted to the structural formula, despite the fact that P.W.3 – Dr. J. Ajay Kumar spoken to about the disability sustained by the petitioner at 45% towards partial permanent disability for post operative supra condyle fracture of right femur, flexion deformity at knee and deformity at right ankle and shortening of right lower limb and, therefore, sought to grant the balance amount of compensation.

5. *Per contra*, Sri B. Devanand, learned Standing Counsel for the 2nd respondent – insurer, contends that the Tribunal has granted even Rs.45,000/- towards the disability and, therefore, the appellant/petitioner is not entitled for any enhancement.

6. Though respondent No.1 – owner of the offending Auto was served with notice, none appears for him.

7. Heard learned counsel for the parties and perused the impugned judgment and the evidence on record.

8. Ex.A-6 – Discharge Card issued by the Orthopaedic Department, Gandhi Hospital, Secunderabad, along with a copy of Case Sheet, which was marked as Ex.A-7, shows that the petitioner was inpatient from 06.06.2006 to 17.06.2006 and was treated for fracture with intra condylar extension of right femur with distal neuro vascular deficit. Hence, it is clear from the evidence of P.W.3 – Dr. J. Ajay Kumar, that the petitioner sustained grievous injuries. P.W.3 is not a Member of the Medical Board and that was the reason, the Tribunal has not resorted to structural formula, but, however, accepted some percentage of disability and thereby granted a sum of Rs.45,000/- towards the disability sustained by the petitioner.

9. Keeping in view, when there has been shortening of the right leg on account of flexion deformity at knee and deformity at right ankle, as per Ex.C-2 – Disability Certificate, the petitioner is, certainly, entitled to a higher amount than the amount of Rs.45,000/- granted by the Tribunal towards the disability sustained by him. Therefore, the amount of Rs.45,000/- granted towards disability sustained by the petitioner is enhanced to Rs.75,000/-.

10. The Tribunal, basing on the evidence of P.Ws.2 and 3, Dr. G. Sujatha and Dr. J. Ajay Kumar, respectively, and the documentary evidence, granted a sum of Rs.50,000/- towards pain and suffering; Rs.641/- towards medical expenses; and Rs.9,000/- towards loss of temporary earnings for three months. The said amounts are maintained.

11. However, the Tribunal has not granted any amount towards extra-nourishment, therefore, a sum of Rs.5,000/- is granted under the said head. Towards transport and attendant charges, a sum of Rs.5,000/- is granted. Thus, the petitioner is entitled to a total compensation of Rs.1,44,641/- (Rs.50,000/- + Rs.641/- + Rs.9,000/- + Rs.75,000/- + Rs.5,000/- + Rs.5,000/- = Rs.1,44,641/-), as against the compensation of Rs.1,04,641/- granted by the Tribunal, with interest @ 7.5% per annum, as awarded by the Tribunal, on the enhanced amount of compensation also.

12. Accordingly, the Civil Miscellaneous Appeal is allowed in part, enhancing the amount of compensation from Rs.1,04,641/- to Rs.1,44,641/- (Rupees one lakh forty four thousand six hundred and forty one only) with interest @ 7.5% per annum on the

enhanced amount of Rs.40,000/- (Rupees forty thousand only) also from the date of the petition till realization. There shall be no order as to costs.

13. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE A. SHANKAR NARAYANA

12.08.2016.

Msr

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