

HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A. No. 178 OF 2006

JUDGMENT:

1. This Appeal is arising out of the order, dated 07.03.2005, in O.P. No.787 of 2002 on the file the Chairman, Motor Accidents Claims Tribunal-cum-IV Additional District Judge (FTC), Tanuku (for short, 'the Tribunal').

2. Respondent No.1 herein is the petitioner and the appellant is the respondent No.3 before the Tribunal in O.P. No.787 of 2002.

3. The brief facts of the petition are as follows:

On 23.07.2002, while the petitioner was proceeding on his Luna motor cycle from Attili to Tanuku, and when he reached near Attili park, met with an accident. The Tata 407 Van bearing No.AP37T 9864 dashed against the Luna motor cycle of the petitioner.

The driver of the crime vehicle Tata 407 Van bearing No.AP37T 9864 is respondent No.1, its owner is respondent No.2 and its insurer is respondent No.3.

The accident occurred due to rash and negligent driving of the respondent No.1. The petitioner received severe injuries in the said accident and he was treated in Government Hospital, Tanuku and, later, he was shifted to Sri Venkateswara Orthopedic Hospital, Tanuku. The petitioner has claimed compensation of Rs.1,31,000/- towards the injuries received by him in the motor vehicle accident.

4. The respondent Nos.1 and 2 did not file any counter before the Tribunal. The respondent No.3, insurer of Tata Van 407 bearing No.AP37T 9864, filed his counter before the Tribunal, opposing the claim.

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

1) Whether the accident had occurred due to rash and negligent driving of the Van bearing No.AP 37 T9864 by its driver-1st respondent?

2) Whether the petitioner is entitled to claim any compensation? If so, to what amount and against whom?

3) To what relief?

6. During the course of trial, on behalf of the petitioner, PWs.1 and 2 were examined and Exs.A-1 to A-13 were marked. On behalf of the respondents, RWs.1 and 2 were examined and Ex.B-1 was marked. Exs.X-1 to X-3 were also marked by the witnesses.

7. The Tribunal, on consideration of the evidence, held issue Nos.1 and 2 in favour of the petitioner and against the respondent No.1 to 3 and awarded compensation of Rs.44,500/- with proportionate costs and interest at the rate of 9% *p.a.* from the date of petition till the date of realization.

8. Feeling aggrieved by the order of the Tribunal, the appellant herein has preferred the Appeal challenging the excessive compensation awarded by the Tribunal.

9. The point for consideration in this matter is whether the compensation awarded by the Tribunal is excessive? If so, is it liable to be modified?

10. Mr. N.S. Bhaskar Rao, learned counsel for the appellant-Insurance Company, advanced arguments. It is mainly contended that the Tribunal has awarded Rs.10,000/- towards each grievous injury instead of Rs.5,000/- and awarded Rs.1,500/- towards each simply injury instead of Rs.1,000/- each. The compensation awarded by the Tribunal is excessive and, therefore, it has to be reduced.

11. Mrs. K. Seshayarajyam, learned counsel for the respondent No.3 herein, submitted her arguments. The claim against respondent No.2, owner of the vehicle, has been dismissed by this Court *vide* order dated 20.04.2016. None appeared for respondent No.1-petitioner.

12. The learned counsel for the appellant appears to have advanced his arguments about the award of excessive compensation based on 2nd schedule of the Motor Vehicles Act, 1988, (for short, 'the Act'); wherein, an amount of Rs.5,000/- was specified for each grievous injury and Rs.1,000/- for each non grievous injury. This argument, and placing reliance on the 2nd schedule of the Act, is no longer in force in view of the catena of decisions rendered by the Hon'ble Apex Court, more particularly, in the view of the decisions of the Apex Court in *Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another*¹, General

¹ MANU/SC/0606/2009

Manager, Keral S.R.T.C. Vs. Susamma Thomas² and Reshma Kumari and others Vs. Madan Mohan and another³. In view of the decision of the Delhi High Court in *Taskinuddin and others Vs. State⁴ (NCT of Delhi and another)*, it is necessary to consider the nature of injuries, nature of treatment undergone by the petitioner and the trauma suffered by him and other circumstances for awarding compensation under the heads of pecuniary and non-pecuniary damages.

13. In this case, the evidence of PW.2, the Medical Officer, is important for considering the nature of treatment taken by the petitioner and the injuries suffered by him. As per the oral testimony of PW.2, he has treated the petitioner and the petitioner undergone operation, got implanted steel rods to his right thigh and was treated as inpatient in the hospital for about 27 days. This evidence of the Medical Officer has to be taken into consideration for awarding compensation in the matter. But, the Tribunal has not considered his evidence as he did not issue any wound certificate and medical prescriptions corresponding to the medical bills. However, the Tribunal has considered that the petitioner has received one grievous injury and four simple injuries as per the report of the x-rays and awarded compensation. Even if the evidence of PW.2 is not relied upon, since the petitioner has suffered one grievous injury and four simple injuries, the compensation awarded by the Tribunal is far less than the

² 1994 (2) SCC 176

³ MANU/SC/0287/2013

⁴ MANU/DE/2984/2013

compensation prescribed in view of the recent decisions of the Hon'ble Apex Court.

14. Learned counsel for the appellant further submitted that the Tribunal has awarded Rs.20,000/- towards medical expenditure without any medical bills and any basis.

15. As a matter of fact, the testimony of PW.2, Ex.A-3 - wound certificate, Ex.A-4 - discharge certificate, Ex.A-5- x-ray films and Exs.A-6 to A-13 medical bills and cash receipts, would clinchingly prove and support the awarding of compensation of Rs.20,000/- by the Tribunal towards medical bills and extra nourishment. Therefore, there is no need to interfere with the finding of the Tribunal in awarding Rs.20,000/- towards the said expenditure.

16. The learned counsel for the appellant further submitted that the Tribunal awarded interest at the rate of 9% p.a. and it is excessive and sought for reduction of the interest from 9% to 7.5% p.a. As a matter of fact, in the light of catena of decisions, it is appropriate to award rate of interest at the rate of 9% p.a. The Tribunal has awarded interest at the rate of 9% p.a., which does not require any interference. Therefore, there are no valid grounds to interfere with the order of the Tribunal. The contentions raised by the appellant that the compensation and the rate of interest awarded by the Tribunal are excessive do not hold good. In the result, the Appeal is dismissed with costs. The order of the Tribunal is confirmed.

17. As a sequel to dismissal of the appeal, miscellaneous petitions, if any, pending in this Appeal shall stand dismissed as infructuous.

G. SHYAM PRASAD, J

Date: .11.2016.
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HON'BLE SRI JUSTICE G. SHYAM PRASAD

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M.A.C.M.A. No. 178 OF 2006

Date. 11.11.2016

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