

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

M.A.C.M.A. No.2373 of 2005

JUDGMENT:

This appeal is filed by the injured claimant seeking enhancement of compensation, awarded in O.P. No.331 of 2000 by the Motor Accidents Claims Tribunal-cum-IV Additional District Judge (Fast Track Court) Nizamabad (for short, 'the Tribunal') on 28.04.2005.

The appellant herein filed the said O.P. claiming compensation of Rs.2,00,000/- for the injuries sustained by him in a motor accident that occurred on 24.01.2000 when he was travelling in lorry bearing registration No.AP-7-V-765 from Hyderabad towards Nizamabad as labour of respondent No.1 along with other labours, at about 5.00 P.M. and when the lorry reached at Anthampally Village, Sivar Chowrashta, on Hyderabad to Nagpur Road, High Way No.7, the driver of the lorry drove it in a rash and negligent manner and dashed a parked lorry bearing registration No.AP-9-V-5480 from behind. In the said accident, the petitioner received fractured injuries on left leg, skull, right leg, head and other parts of the body. He was immediately shifted to the Government Hospital, Kamareddy, and thereafter he was referred to the Gandhi Hospital, Secunderabad, where his right leg was operated and rod was inserted. Thereafter, he was treated at Dr. Bhupathireddy Hospital, Nizamabad. Though he claimed an amount of Rs.12,60,000/-, he restricted his claim to Rs.2,00,000/-.

Respondent No.1, owner of the vehicle, remained *ex parte* and Respondent No.2-Insurance Company contested the case.

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

1. Whether the accident was due to rash and negligent driving of the lorry bearing No.AP-7-V-765 by its driver?
2. Whether the petitioner is entitled for compensation. If so to what amount and against which of the respondents?
3. To what relief?

Before the Tribunal, the injured was examined as PW1 and examined one Dr. L.Ramulu on commission as PW2. He marked exhibits A1 to A9.

The Tribunal, on the basis of oral and documentary evidence, held that the accident occurred due to rash and negligent driving of the driver of the lorry bearing registration No.AP-7-V-765.

As per the Wound Certificate under Ex.A3, issued by the Deputy Civil Surgeon, Community Health Center, Kamareddy, the petitioner sustained grievous injury on the left knee, 2" x 5" contusion left foot X-ray left knee reveals fracture of shaft with lower 1/3rd tibia and fibula. It appears that he was admitted in the hospital on 25.01.2000 and was discharged on 13.02.2000. The Tribunal held that though the petitioner proved with regard to sustaining fracture of left 1/3rd tibia, he could not prove the evidence for sustaining fracture of right leg, skull and chest bone and injuries on other parts of the body. The Tribunal also noticed that in view of the observations of this Court in A.A.O. No.3518 of 2004, the evidence of PW2 was found to be untrustworthy. The petitioner was working as a labourer and was aged about 20 years. On the basis of evidence, the Tribunal awarded an amount of Rs.5,000/- for the grievous injury, Rs.5,000/- towards medical expenses, Rs.5,000/- towards pain and suffering and Rs.4,500/- towards loss of income. Thus, in all the Tribunal awarded an amount of Rs.19,500/- towards compensation. Seeking enhancement of the said amount, the present appeal is filed.

There is no dispute with regard to the fracture of left 1/3rd tibia and the award of the amount of Rs.5,000/- to such fracture is on the lower side and it has to be enhanced to Rs.15,000/-, though the award in respect of the medical expenses does not warrants any interference. The petitioner is stated to be a labourer and he had taken treatment for five days. The amount of Rs.4,500/- awarded towards loss of income is grossly inadequate and it should be enhanced to Rs.6,000/-. The amount of Rs.5,000/-, awarded towards pain and suffering, should be enhanced to Rs.10,000/-.

In the above circumstances, the amount of Rs.19,500/-, awarded by the

Tribunal, is enhanced to Rs.36,000/- (Rupees thirty six thousand only) and the enhanced amount of compensation shall carry the same rate of interest @ 9% per annum from the date of petition till the date of realisation.

However, in view of the petitioner being a gratuitous passenger, the Insurance Company is not liable to pay any amount and it is open to the claimant to recover the enhanced amount from the owner of vehicle.

Accordingly, this Appeal is partly allowed. No order as to costs.

Miscellaneous Petitions, if any, pending shall stand closed.

A.RAMALINGESWARA RAO, J

28.01.2016

MVA

-