

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

M.A.C.M.A. No.2387 of 2009

JUDGMENT:

Challenging the award dated 09.05.2006 in O.P. No.249 of 2002 passed by the Chairman, MACT-cum-II Additional District Judge, (Fast Track Court), Nizamabad (for short 'the Tribunal'), the claimant preferred the instant appeal.

2) The factual matrix of the case is thus:

a) On 30.11.2001, the claimant along with others was travelling in an auto bearing No.AP 25 U 133 from Navipet towards Binola, at about 4.45 pm when she reached near Gandhi Nagar village, the driver of the auto drove the same at high speed and in a rash and negligent manner, lost control over the same and dashed against a road side stone. Due to which, the auto turned turtle and she sustained multiple fractures to right hand, left leg and injuries to head. Immediately, she was shifted to Government Hospital, Nizamabad, Hyderabad where she was treated as inpatient. After discharge, she took treatment in private hospital and incurred an expenditure of Rs.50,000/-. It is averred that the accident was occurred due to fault of driver of offending auto. On these pleas, the claimant filed O.P. No.249 of 2002 against respondents 1 and 2, who are the owner and insurer of the offending auto and claimed Rs.1,50,000/- as compensation under different heads mentioned in the O.P.

- b) Respondent No.1 remained ex parte.
- c) Respondent No.2 opposed the claim.
- d) During trial P.W.1 was examined and Exs.A.1 to A.3 were marked on behalf of claimant. Policy filed by R.2 was marked as Ex.B1.

d) On appreciation of oral and documentary evidence, the Tribunal held that though PW.1—claimant claimed that in the resultant of accident she suffered fracture of right hand, left leg and injuries to her head, Ex.A3—wound certificate shows that she suffered only simple injury in the shape of contusion on arm, for which she was treated in the Government Hospital, Nizamabad. Having thus observed, the Tribunal awarded Rs.10,000/- as compensation. Challenging the said award as compensation awarded by the Tribunal as low and inadequate, the instant appeal is filed by the claimant.

3) The parties in this appeal are referred as they stood before the lower Tribunal.

4) Heard arguments of Sri Venkatesh Varanasi, learned counsel for appellant and Sri C.Prakash Reddy, learned counsel for respondent No.2. R.1 is not necessary party in this appeal vide cause title.

5) Learned counsel for appellant argued that the claimant infact suffered fracture injuries and took treatment initially in Government Hospital, Nizamabad and later in private hospital and incurred huge medical expenditure but the Tribunal did not

consider the same and awarded pittance of Rs.10,000/- and therefore compensation has to be enhanced suitably.

6) Per contra, learned standing counsel for Insurance Company argued that the claimant suffered one simple injury in the shape of contusion on arm as per Ex.A.3—wound certificate and therefore the Tribunal rightly awarded Rs.10,000/- and there is nothing to enhance the compensation. He thus sought for dismissal of the appeal.

7) In the light of the above rival arguments, the point for determination in this appeal is:

“Whether the compensation awarded by the tribunal is just and reasonable or requires any enhancement?”

8) POINT: The accident, involvement of auto bearing No.AP 25U 133 and the injuries to the claimant are not in dispute. It is true that though the claimant claimed that she suffered fracture injuries but she could not substantiate the same by producing cogent evidence. The trial Court therefore going by Ex.A3—wound certificate awarded Rs.10,000/-.

7) The considered view of this Court, having regard to the fact that the claimant suffered injuries when the auto turned turtle, compensation of injuries and medical expenditure can be enhanced to **Rs.20,000/-**.

8). In the result, the appeal is partly allowed and ordered as follows:

a) Compensation is enhanced by Rs.10,000/- with

proportionate costs. The enhanced compensation amount shall carry interest at 7.5% per annum from the date of O.P till the date of realization.

- b) Respondents 1 and 2 in the O.P are directed to deposit the compensation amount within One (1) month from the date of this judgment, failing which, execution can be taken out against them.

As a sequel, miscellaneous petitions, if any, pending in this appeal shall stand closed.

U. DURGA PRASAD RAO, J

Date:01.06.2016

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