

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

MACMA No. 2495 of 2005

Judgment:

Aggrieved by the liability fastened on the second respondent – United India Insurance Company Limited, in OP No.353 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal-cum–V Additional District Judge (III Fast Track Court), Nalgonda, at Miryalguda, by the order, dated 06.06.2005, whereby and whereunder the Tribunal granted a sum of Rs.2,21,000/- as compensation for the injuries sustained by the petitioner – claimant therein, the instant appeal is preferred questioning the quantum of compensation on the ground that the claim was only for Rs.1,00,000/- claimed by the petitioner under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the Original Petition before the Tribunal.

3. The facts, in brief, are that, on 12.05.2000, when the petitioner was returning from Thirumalagiri to Haliya and reached Pangavanikunta village, at about 8.00 PM, the driver of the Tractor and Trailer bearing registration Nos.AP-24T-3138 and 3239, came in opposite direction driving it in a rash and negligent manner and dashed him, due to which, he sustained grievous injuries. He was immediately rushed to private hospital for first aid at Miryalguda and, later, he was shifted to Government Hospital, Miryalguda. According to him, even on the date of filing instant claim petition he was taking follow-up treatment. He claimed that he was working as Veterinary Assistant at Peddavoura, earning Rs.7500/- per month. According to him, even after treatment, he was unable to attend to his job and, thus, his career was affected and, therefore, he sought the amount of

Rs.1,00,000/- from the respondents 1 and 2, who are owner and insurer of the Tractor and Trailer respectively.

4. Before the Tribunal, the first respondent – owner of the vehicle remained *ex parte*. The second respondent – Insurance Company filed counter opposing the claim.

5. The Tribunal, based on the pleadings placed before it, framed three issues in the direction of determining the compensation and also the liability.

6. During enquiry, the petitioner examined himself as PW.1 and marked Exs.A1 to A9. On behalf of the second respondent no oral evidence was let in, but copy of insurance policy was marked as Ex.B1.

7. The Tribunal, on issue No.1, on appraisal of evidence, held it in favour of the petitioner. On issue No.2, taking into consideration the nature of injuries finding place in Ex.A3 – wound certificate and basing on Ex.A9 - certificate, issued by the Veterinary Assistant Surgeon, Veterinary Dispensary, Chandampet, to the effect that the petitioner has not claimed any medical reimbursement during the relevant year, granted a sum of Rs.4,000/- towards transport to hospital and extra nourishment, Rs.2,000/- towards medical expenses, Rs.10,000/- towards loss of temporary earnings, as he had availed medical leave for quite a long period, and Rs.2,00,000/- towards permanent disability. Besides the said amounts, the Tribunal has also granted a sum of Rs.5,000/- towards pain and suffering, thus, a total sum of Rs.2,21,000/- was granted by the Tribunal with interest at 9% p.a.

8. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the Tribunal has not properly appreciated the evidence on record and in the absence of medical evidence the amount of Rs.2,21,000/- granted by the Tribunal was

excessive and exorbitant against the claim of Rs.1,00,000/-.

9. Heard Sri V. Sambasiva Rao, learned Standing Counsel for the appellant – Insurance Company. In fact, the arguments advanced by the learned counsel for the appellant were heard on 19.01.2016 and, to afford an opportunity to the second respondent to get the arguments tendered through his learned counsel on record, the matter was adjourned to 20.01.2016 and to 21.01.2016 and again adjourned to this day. Even then, no representation for the second respondent – claimant. None appears for the first respondent.

10. The Tribunal granted a total sum of Rs.2,21,000/- as compensation by referring to the injuries sustained by the petitioner based on the documentary evidence. The Tribunal has not assigned any specific reasons in granting Rs.2,00,000/- and, as to how it has determined the amount of Rs.2,00,000/- towards permanent disability, though, mentioned that the petitioner has not suffered any monetary loss in the employment due to injuries in the accident. In that view of the matter, in case the Tribunal is accepting Ex.A6 – disability certificate, in which 25% disability is mentioned, the Tribunal ought to have applied the structured formula irrespective of the fact whether there was monetary loss in the employment or not. The Tribunal has granted Rs.2,00,000/- towards permanent disability, though, the very claim was for award of Rs.1,00,000/-. In that view of the matter, the instant matter requires to be remitted to the Tribunal for proper adjudication on the aspect of disability said to have sustained by the petitioner in accordance with law. Thus, the matter is remitted to the Tribunal.

11. It is submitted by the learned Standing Counsel for the appellant that this Court, by the order, dated 26.09.2005, directed the appellant to deposit half of the amount awarded including interest and costs within a period of six weeks and also permitted the claimant to

withdraw the same without furnishing security and that the said order was complied with by the appellant and even the amount was withdrawn by the claimant. Hence, the Tribunal, while determining the compensation afresh under the relevant heads, pass appropriate orders in regard to the amount withdrawn by the claimant.

12. For the aforesaid reasons, the instant appeal is allowed setting aside the order and decree challenged herein remitting the matter to the Tribunal for determining the compensation in accordance with law as indicated in the above. Since the claim relates to the year 2002, the Tribunal is directed to dispose of the Original Petition as expeditiously as possible, preferably within a period of six (6) months from the date of receipt of a copy of this order. There shall be no order as to costs.

13. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal shall stand closed.

A. SHANKAR NARAYANA, J

Date: 22.01.2016
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