

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

M.A.C.M.A.NO.1269 OF 2005

JUDGMENT:

This appeal is preferred by the appellant-1st respondent against the order, dated 27-01-2005 in M.O.P.No.1572 of 2001 on the file of the VII Additional District Judge (Fast Track Court), Visakhapatnam.

2. The appellant herein is the 1st respondent, whereas the 1st respondent herein is the petitioner and the 2nd respondent is the 2nd respondent before the Tribunal.

3. For the sake of convenience, the parties herein after will be referred to as they were arrayed before the Tribunal.

4. Petitioner filed the above O.P. claiming compensation of Rs.1,00,000/- for the injuries sustained by him in the accident that occurred on 28-09-2001 at about 5.30 P.M., while he was crossing the National Highway Road at Punjab Hotel, opposite to Jakir Hussain Nagar, Visakhapatnam in Marripalem at Visakhapatnam. When he was crossing the road, a scooter bearing No. AP 31 N 3749 driven by the 2nd respondent came in a rash and negligent manner and dashed against the petitioner at his left leg. At the time of accident, he was aged about 30 years and he was a welder. Hence, the claim petition.

5. The case was contested by the 1st respondent stating that the petitioner suppressed the facts.

6. Basing on the above pleadings, the following issues were settled for trial:

1. Whether the petitioner sustained injuries on account of rash and negligent driving of the vehicle bearing Regn.No.AP 31 N 3749 by R2?

2. Whether the petitioner is entitled to compensation and if so, to what amount and from which of the respondents?

3. To what relief?

7. The petitioner himself was examined as P.W.1 and the doctor as P.W.2 and got marked Exs.A1 to A36, No evidence either oral

or documentary was adduced on behalf of the respondents.

8. The Tribunal after considering the evidence on record, held that the petitioner sustained injuries due to rash and negligent driving of the scooter by the 2nd respondent owned by the 1st respondent bearing Regn. No.AP 31 N 3749, However, the claim petition was dismissed insofar as the 2nd respondent is concerned.

9. As per Ex.A4-wound certificate, the petitioner suffered a sutured wound measuring 3 cms on the left upper leg and a cut laceration in the medial aspect of left lower leg. The X ray revealed fracture of both bones tibia and fibula of the left leg. The Tribunal awarded an amount of Rs.25,000/- for the fracture and Rs.1500/- for the simple injury. P.W.2 issued disability certificate showing 30% disability. He deposed that on 02-10-2001 the external fixtures were applied and the petitioner was discharged on 30-10-2001 and the fixtures were removed two months later. Then PTP was applied and that by 02-09-2003 he found that the fractured bones were united in malposition and there was deformity. He further deposed that the injured cannot walk longer distances and he is complaining pain and he is limping. In those circumstances, he certified the disability at 30%. The Tribunal took the monthly income at Rs.1500/- and assessed the functional disability at 15%. Accordingly the Tribunal fixed loss of compensation at Rs.50,000/-. On the basis of bills and receipts produced by the petitioner, the Tribunal awarded an amount of Rs.30,000/-. Thus in all, the Tribunal assessed the loss of compensation at Rs.1,06,500/-. Since the petitioner claimed only compensation of Rs.1,00,000/-, the said amount was awarded along with interest at 9% pa., from the date of petition till the date of deposit. Challenging the same, the present appeal is preferred.

10. There is no dispute that the petitioner sustained fracture to both bones of tibia and fibula of left leg. The petitioner was a welder and cannot undertake the work continuously for a long period. There is also no dispute with regard to the age of the petitioner and the medical bills produced by him. In those circumstances, this Court finds that the Tribunal after considering both oral and documentary evidence rightly awarded compensation and absolutely there are no grounds to interfere with the same.

11. Accordingly, the appeal is dismissed confirming the order, dated 27-01-2005 in M.O.P.No.1572 of 2001 on the file of the VII

Additional District Judge (Fast Track Court), Visakhapatnam. No order as to costs. Miscellaneous petitions, if any pending in this appeal shall stand closed.

A.RAMALINGESWARA RAO, J

DATED: 27-01-2016

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