

HON'BLE SRI JUSTICE S. RAVI KUMAR

M.A.C.M.A.No.551 of 2013

JUDGMENT:

This appeal is preferred questioning judgment dated 10.11.2006 in M.V.O.P.No.670 of 2005 on the file of IV Additional District Judge-cum-Motor Accident Claims Tribunal, Kurnool.

2. Appellant herein filed claim petition before Motor Accident Claims Tribunal claiming a sum of Rs.1,00,000/- for the injuries sustained by her in a motor accident that took place on 09.12.2001. She contended that while she along with her three sons was traveling in a auto bearing No.AP 09 V 2096 from Kodumur to Puttapasam, after the auto crossed Vemugodu Village, one RTC bus came in opposite direction from Yemmiganur side at high speed in a rash and negligent manner and dashed auto that resulted injuries to her. She contended that she was hospitalized, underwent operation and spent Rs.30,000/- towards medical expenses and attendant charges and she was hale and healthy prior to accident and running a kirana shop and earning Rs.36,000/- per annum and due to injuries she was unable to do her kirana shop business and that she is entitled for Rs.1,00,000/-.

3. First respondent filed counter and 3rd respondent- Insurance Company filed separate counter disputing the claim of appellant and the main ground on which Insurance Company opposed the claim is that there is no

fault on the part of the auto and on the contentions and rival contentions of both parties, Tribunal conducted enquiry during which two witnesses are examined on behalf of claimant and four documents are marked and on behalf of respondents' side two witnesses are examined and three documents are marked. On a overall consideration of oral and documentary evidence, particularly the evidence of Medical Officer, who assessed the disability of appellant at 25%, the Tribunal granted compensation of Rs.55,000/- as a whole with interest from the date of petition till the date of deposit at 7.5% p.a. and partly allowed the claim petition. Aggrieved by the quantum, claimant preferred the present appeal.

4. Heard arguments.

5. Advocate for appellant submitted that Tribunal failed to see the fracture to the left upper arm of appellant was not united and she has got difficulty to do any work as there is movement restriction of right elbow and that Tribunal ought to have taken it as permanent disability. He further submitted that Tribunal ought to have taken into consideration that appellant spent towards medicines and materials like rods used for surgery, but no amount is awarded and that award of Tribunal is unsustainable. He submitted that the claim of appellant of Rs.1,00,000/- is quite reasonable and Tribunal ought to have granted that amount but arbitrarily fixed Rs.55,000/- and the same has to be enhanced.

6. On the other hand, advocate for Insurance Company submitted that the disability was only 25% and there is no evidence on record to show that on account of this disability she is prevented from doing her earlier profession and that the Tribunal has rightly granted compensation and that there are no grounds to interfere.

7. Now the point that would arise for my consideration in this appeal is:

Whether the judgment in M.V.O.P.No.670 of 2005 on the file of IV Additional District Judge-cum-Motor Accident Claims Tribunal, Kurnool, is legal, proper and correct?

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POINT :

8. There is no dispute with regard to accident so also, existence of valid Insurance Policy as on the date of accident i.e., on 09.12.2001. As seen from the record, the version of appellant is that she received grievous injuries both on right leg and right hand and iron rods were fixed and she suffered disability due to the above referred injuries. Medical Officer, who treated the appellant, is examined as PW.2 and he deposed in his evidence that out of the two fractures one fracture is united and one fracture has not united by the date of his examination and that there is restriction of movement of right elbow joint. He assessed the percentage of the disability at 25%, which he said that it is partial and permanent and in the cross-examination also he stated the same thing. Considering the percentage of disability and also the age

of the injured with reference to the nature injuries, Tribunal fixed compensation at Rs.55,000/- and directed that respondent Nos.2 and 3 together has to bear 50% and respondent No.1 has to bear remaining 50% of the compensation. Now, the main grievance of appellant is that Tribunal has failed to take into consideration, medicine charges, operation charges and materials like rods etc., As seen from the material, appellant has not specifically deposed the details of amounts spent towards medicines, amount paid towards operation charges and amount spent towards purchase of metal like rods etc., and she has not even examined any person to establish those facts, which are now raised in the appeal. She only claimed a consolidated figure of Rs.30,000/- towards medical and attendant charges and Tribunal on a consideration of bunch of medical bills marked as Ex.A.3 fixed the compensation. As rightly pointed out by advocate for Insurance Company, there is absolutely no error in the award of the Tribunal and the amount of Rs.55,000/- granted by Tribunal is in proportion to the percentage of disability assessed by the Medical Officer, I do not find any wrong in the approach of Tribunal and it rightly fixed compensation and that there are no grounds to interfere with the same.

9. For these reasons, I am of the view that the appeal is devoid of merits and the same is liable to be dismissed.

10. Accordingly, this appeal is dismissed.

11. Miscellaneous petitions pending, if any, shall stand closed. No costs.

S. RAVI KUMAR, J

22nd February 2016.

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