

HON'BLE SRI JUSTICE M.S.K.JAI SWAL

M.A.C.M.A.No.790 of 2010

JUDGMENT:

The appeal is preferred by the claimant in O.P.No.958 of 2005 on the file of the learned Chairman, Motor Accident Claims Tribunal-cum-II Additional District Judge (FTC), Nizamabad (for short "the Tribunal), being dissatisfied with the quantum of award to an extent of Rs.70,000/- as against the claim of Rs.2,00,000/- for the injuries sustained by him in the accident that took place on 24.06.2005 at 9.30 a.m at Manikbhandar Shivar, near Borgaon(K) Bridge.

The brief case of the claimant is that on 24.06.2005 the claimant along with one Satyanarayana were proceeding towards Nizamabad from Bheemgal on Yamaha motorcycle, bearing registration No.AP25L-1811, at about 9.30 a.m. when they reached Manikbhandar shivar, near Borgaon bridge, a Maruthi car bearing registration No.AP9H-5374 came in opposite direction in a rash and negligent manner and dashed against his motorcycle, due to which, the claimant fell down and sustained multiple and grievous injuries. 1st respondent is the owner of the offending vehicle and the 2nd respondent is the insurer.

The respondent/Insurance Company filed the counter denying its liability. It is further contended that the driver of the offending vehicle had no valid driving licence and the owner of the offending vehicle has violated the terms and conditions of the policy and hence the insurance is not liable to pay compensation.

On behalf of the claimant, P.Ws.1 & 2 were examined and got marked Exs.A.1 to A.7. On behalf of the respondent, no oral evidence was adduced, but the insurance policy was marked as Ex.B1.

The Tribunal, on consideration of the oral and documentary evidence, has awarded compensation of Rs.70,000/- as against the claim of Rs.2,00,000/-.

The Tribunal after taking into consideration the oral and documentary evidence on record held that the claimant is entitled to the compensation as under:-

1. Compensation for grievous injuries	Rs.20,000/-
2. Compensation for medical expenses	Rs.15,000/-
3. Compensation for operation charges	Rs.25,000/-
4. Compensation for extra nourishment	Rs. 2,500/-
5. Compensation for transport charges	Rs. 2,500/-
6. Compensation for attendant charges	Rs. 2,500/-
7. Compensation for pain and suffering	<u>Rs. 2,500/-</u>
Total Compensation	<u>Rs.70,000/-</u>

Aggrieved by the same, the claimant preferred the present appeal contending that the amount awarded is grossly inadequate and the same need to be enhanced.

On behalf of the Insurance Company it is submitted that the compensation awarded by the Tribunal is just and reasonable which do not warrant any enhancement and hence the appeal is liable to be dismissed.

Heard both sides and perused the material on record.

The admitted case is that on 24.06.2005 the claimant sustained the injuries in the accident which fact is not disputed. The claimant has produced oral and documentary evidence about the injuries sustained by him. The claim is made for Rs.2,00,000/-. The claimant gave evidence in support of his contention and further examined the Medical Officer as PW.2. The evidence on record shows that the claimant sustained a fracture of L4

Vertebrae and was admitted in hospital from 24.06.2005 to 08.07.2005. The Tribunal in para 12 observed that it is fair and reasonable to award compensation of Rs.20,000/-; operation expenses of Rs.1,00,000/- but inclined to grant a sum of Rs.30,000/-. From this observation of the Tribunal, it is not clear as to what the Tribunal intended and for what reason the amount has been reduced. It is also not clear as to why the documents produced by the claimant evidencing the expenditure for medical treatment of Rs.25,000/- was disbelieved and only Rs.10,000/- was awarded. But the Tribunal is not clear on this aspect as well. However, having observed that Rs.10,000/- can be awarded towards medical expenses, in the ultimate para while discussing on issue No.3 the Tribunal awarded Rs.15,000/- towards medical expenses and operation charges at Rs.25,000/- even though in the previous paragraph it is observed that a sum of Rs.30,000/- can be granted for meeting the operation expenses. In addition to the above, the Tribunal awarded a sum of Rs.2,500/- each under the heads of extra-nourishment, transport charges, attendant charges and pain & suffering.

When there was sufficient evidence to show that the claimant sustained a grievous injury resulting in fracture and was hospitalized for more than 15 days and underwent surgery, granting a sum of Rs.2,500/- towards pain and suffering is grossly inadequate. At least, a sum of Rs.25,000/- need to be awarded for pain and suffering instead of Rs.2,500/-. Though for the grievous injury, medical expenses, operation charges, there is some discrepancy, but the overall amount awarded under three heads appears to be just and reasonable.

In view of the above foregoing discussion, the compensation to the claimant is determined as under:-

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|---------------------------------------|-------------|
| 1. Compensation for grievous injuries | Rs.20,000/- |
| 2. Compensation for medical expenses | Rs.15,000/- |

3. Compensation for operation charges	Rs.25,000/-
4. Compensation for extra nourishment	Rs. 2,500/-
5. Compensation for transport charges	Rs. 2,500/-
6. Compensation for attendant charges	Rs. 2,500/-
7. Compensation for pain and suffering	<u>Rs.25,500/-</u>
Total Compensation	<u>Rs.92,500/-</u>

In the result, the appeal is partly allowed enhancing the compensation from Rs.70,000/- to Rs.92,500/- (Rupees ninety two thousand and five hundred only) to the claimant payable by respondents No.1 and 2 jointly and severally together with interest at 7.5% per annum from the date of petition till the date of realization. The claimant is entitled to withdraw the entire amount, as and when deposited, without furnishing any security.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

M.S.K.Jaiswal, J

Date: 23rd June, 2017
Dsr/smr