

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No. 2150 OF 2005

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), by the petitioner in O.P. No.196 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-V Additional District Judge, Nizamabad (for short, 'the Tribunal'), aggrieved by the dismissal order dated 30.05.2005 passed by the Tribunal in the said O.P. filed under Section 166(1)(a) of the Act claiming Rs.1,50,000/- as compensation for the injuries sustained by him in a motor accident occurred on 07.06.2000.

2. Heard the learned counsel for the appellant-petitioner. Though served with notices, none appeared for both the respondents, who are the owner and insurer of the crime vehicle. Perused the material available on record.

3. Learned counsel for the appellant would submit that the appellant had claimed compensation of Rs.1,50,000/- for suffering fracture and other injuries in a motor accident; the Tribunal disbelieving that the appellant suffered injuries in a motor accident, dismissed the claim petition; there is ample evidence on record to show that the appellant suffered injuries in the motor accident; and ultimately, prayed to allow the appeal by granting compensation to the appellant.

4. In view of the above contentions, the following points have come up for consideration:

(1) Whether the appellant-petitioner suffered injuries in the accident occurred due to the rash and negligent driving of the driver of the jeep bearing No.AIV 3186?

(2) Whether the appellant-petitioner is entitled for compensation of Rs.1,50,000/-?

5. **POINTS:** The appellant deposed as P.W.1 before the Tribunal. His evidence reveals that he suffered fracture injuries on right ribs, left leg, on the head and other parts of the body. He was hospitalised for five days. He suffered those injuries due to the rash and negligent driving of the driver of the jeep bearing No.AIV 3186, while going to Bodhan from Nizamabad. Ex.A.1 is the certified copy of F.I.R. and Ex.A.2 is the certified copy of charge sheet. There is no mention of the appellant suffering fracture of his left leg in Ex.A.1-certified copy of F.I.R. There is also no mention of such injury in Ex.A.2-certified copy of charge sheet. Ex.A.3 is the wound certificate of the appellant. There is no mention of the appellant suffering fracture to his left leg. There is specific mention in Ex.A.1-certified copy of F.I.R. and Ex.A.2-certified copy of charge sheet that the appellant suffered fracture to his 5th and 6th ribs. As per Exs.A.1 and A.2, the appellant suffered those injuries in the accident occurred due to the rash and negligent driving of the driver of the jeep bearing No.AIV 3186 while going from Nizamabad to Bodhan on 07.06.2000 at about 4-00 p.m. The appellant has also filed prescriptions and medical bills marked as Exs.A.6 to A.8. The appellant has filed Ex.A.4-disability certificate, wherein it is mentioned that the disability suffered by him is shown as 40%. The appellant was not examined by any Medical Board to assert about the correct disability suffered by him. The Tribunal having analysed the entire

oral and documentary evidence, held that there is inconsistency in the pleadings, oral evidence and the documentary evidence. As per Ex.A.3-wound certificate, the appellant suffered fracture of 5th and 6th ribs. The same is mentioned in Ex.A.1-certified copy of F.I.R. The driver of the jeep was prosecuted for the offence under Section 338 I.P.C. Therefore, it cannot be said that the appellant did not suffer fracture to 5th and 6th ribs in the accident occurred due to the rash and negligent driving of the driver of the jeep bearing No.AIV 3186. Ex.A.4-disability certificate is of no use to the appellant, as there is no evidence of doctor, as well as the examination of the appellant by the Medical Board. The oral and documentary evidence on record was not properly looked into and was not appreciated by the Tribunal. Therefore, it can be safely concluded that the appellant suffered fracture of 5th and 6th ribs in the accident occurred due to rash and negligent driving of the driver of the jeep bearing No.AIV 3186. So, the appellant is entitled for compensation of Rs.20,000/- towards pain and suffering for the injuries, Rs.5,000/- towards medical and transport expenses and Rs.2,000/- towards loss of earnings for a period of one month. In all, the appellant is entitled for a sum of Rs.27,000/- as compensation from both the respondents with interest at 7.5% per annum from the date of petition till the date of realisation.

6. In the result, this appeal is allowed in part, setting aside the order dated 30.05.2005 passed by the Tribunal in O.P. No.196 of 2001. Consequently, granting an amount of Rs.27,000/- with interest at 7.5% per annum from the date of petition till the date of realisation, as compensation in favour of the appellant against the respondents. The respondents shall pay the compensation awarded and interest jointly and severally to the

appellant-petitioner within a period of one month. On such deposit, the appellant is permitted to withdraw the entire amount of compensation with interest. There shall be no order as to costs.

7. Miscellaneous Petitions pending, if any, shall stand closed.

Date: 23.10.2017
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Dr. SHAMEEM AKTHER, J

