

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

M.A.C.M.A.No.1121 of 2010

JUDGMENT:

This appeal is filed by the claimant in O.P.No.220 of 2008 on the file of the learned Chairman, Motor Accident Claims Tribunal-cum-I Additional District Judge, Adilabad (for short 'the Tribunal') being aggrieved by the judgment and decree, dated 03.02.2010, by and under which the Tribunal awarded a sum of Rs.21,033/- as against the claim of Rs.1,30,000/- for the injuries sustained by the appellant in the accident said to have taken place on 24.12.2007, involving his motorcycle bearing registration No.AP36F4546 and Bolero GLX No.AP15AC1119, which was owned by the 1st respondent and insured by the 2nd respondent.

Briefly the case of the appellant is that on the date and time of the accident, himself and his wife were proceeding on motorcycle towards Mancheria, when reached Naspur cross road, a Bolero came in opposite side and dashed his motorcycle, due to which, himself and his wife thrown at a distance of 3 to 4 yards and consequently, he sustained multiple injuries, for which he underwent treatment for nearly two months. It is also his case that in the accident, he suffered fracture to his left knee and another injury near his left eye. The appellant claims to have been treated for about 41 days and spent about Rs.40,000/-.

On behalf of the insurance company, it was contended that the claim petition is not maintainable for non-joinder of owner and insurer of the motorcycle and the person who has driven the offending vehicle was not having valid driving licence.

Basing on the rival contentions, the Tribunal framed the following issues for trial:

- 1) Whether the accident occurred on 24.12.2007 due to rash and negligent driving of driver of Bolero GLX bearing No.AP-15-AC-1119 by its driver?
- 2) Whether the petitioner is entitled to any compensation? If so, to what extent and against which of the respondents?
- 3) To what relief?

The claimant in support of his claim, examined himself as PW 1 and also examined the Medical Officer as PW 2 and produced Exs.A1 to A10. On behalf of the insurance company, Ex.B1, copy of the policy was marked.

On appreciation of oral and documentary evidence, by the impugned judgment and decree, the Tribunal held that the claimant is entitled to a sum of Rs.12,500/- towards pain and suffering, Rs.3,000/- towards attendant charges, Rs.3,000/- towards extra nourishment charges and Rs.2,533/- towards medical and hospital expenses. Aggrieved by the said award, the present appeal is filed by the claimant.

It is the contention of the learned counsel for the appellant that though the Tribunal awarded a sum of Rs.12,500/- towards pain and suffering, but failed to award for the grievous and simple injuries which the claimant sustained.

Heard both sides and perused the record.

The evidence on record clearly shows that in the accident involving the motorcycle driven by PW 1 and the crime vehicle which was insured by the 2nd respondent, the appellant-PW 1 sustained one grievous injury and two simple injuries. The Medical Officer-PW 2 certified that the claimant-PW 1 has sustained a closed fracture on left tibia, besides an abrasion on the left eyebrow and an abrasion on the left side of the mouth. The Medical Officer opined that injury No.1 is grievous in nature and injuries 2 & 3 are simple in nature. The Doctor further deposed that surgery was performed, the claimant was bedridden for a period of two months. The Doctor has also

authenticated the genuineness of Exs.A4 to A8 and A10 which are medical records. The learned Tribunal though has taken into consideration the fact that the injured complained grievous injury which resulted in his hospitalization to a considerable period, and also simple injuries, has not awarded any compensation for the injuries sustained by him, even though it granted Rs.12,500/- for the pain and suffering. The Tribunal ought to have awarded compensation for the injuries sustained by the claimant in addition to pain and suffering which is a corollary injury sustained by him.

In that view of the matter, the appellant/claimant is entitled to additional sum of Rs.10,000/- for the fracture sustained to his left leg and another sum of Rs.10,000/- for the simple injuries sustained by him.

In the result, the Appeal is allowed in part, enhancing the compensation from Rs.21,033/- to Rs.41,033/-. The 2nd respondent-insurance company is directed to deposit the enhanced amount before the court below within a period of two months from today, together with interest thereon @7.5% p.a from the date of claim petition till the date of deposit. On such deposit, the appellant/claimant is entitled to withdraw the same without furnishing any security.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

Date: 8th June, 2017
Dsr

M.S.K.JAI SWAL, J