

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

C.M.A. No.4124 OF 2004

JUDGMENT:

Not being satisfied with the quantum of compensation of Rs.25,000/- awarded in O.P. No.1136 of 1998, dated 22.3.2001, on the file of the Motor Accidents Claims Tribunal-cum-Principal District Judge, Nalgonda (for short, 'the Tribunal') against Rs.2,00,000/-, filed under Section 166 of the Motor Vehicles Act (for short, 'the Act'), the claimant preferred the present appeal under Section 173 of the Act seeking enhancement of compensation.

2. Heard Sri T. Viswarupa Chary, the learned counsel for the appellant, and Sri K. Sitaram, the learned counsel for the 2nd respondent - Insurance Company. The appeal against respondent No.1 is dismissed for default vide Court Order, dated 8.2.2016, as he remained *ex parte* before the Tribunal below.

3. For the sake of convenience, the parties will hereinafter be referred to as arrayed before the Tribunal.

4. The facts in issue are as under:

The claimant/appellant filed an application under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.2,00,000/- (Rupees Two lakhs only) as he sustained injuries in a motor accident that took place on 18.10.1997. On the said day, while the claimant working as cleaner of D.C.M. Toyota Van bearing

No.AIV 7776 started from Hyderabad to Vijayawada and when the said van reached near Bailapuram Village on N.H.9 at about 8.30 a.m., the driver of the van drove it in a rash and negligent manner at high speed and dashed against the stationed lorry. As a result, the claimant sustained injury on his left leg upper thigh region and on other parts of the body. Thereafter, he was shifted to Osmania General Hospital, Hyderabad, for treatment. In respect of the above incident, a case in Crime No.116 of 1997 of Choutuppal P.S. was registered. Since the respondent 1 and 2, being owner and insurer, the claimant/appellant filed O.P. No.1136 of 1998 claiming compensation of Rs.2,00,000/- (Rupees Two lakhs only).

5. The respondent No.1 remained *ex parte* before the Tribunal. The 2nd respondent – Insurance Company - filed a counter denying the material averments in the petition and also the manner in which the accident took place, injuries received, and sought to dismiss the petition.

6. Basing on the above pleadings, the Tribunal framed the following issues:

- (1) Whether the accident was due to rash and negligent driving by the driver of D.C.M. Toyota bearing No.AIV 7776?
- (2) Whether the petitioner is entitled for any compensation, and if so, to what amount?
- (3) To what relief?

7. In support of the claim, the claimant himself examined as P.W.1, apart from marking Exs.A1 to A7. On behalf of the contesting respondent, no oral or documentary evidence is adduced.

8. After considering the oral and documentary evidence available on record, the Tribunal granted compensation payable by the respondents 1 and 2 for a sum of Rs.25,000/- (Rupees Twenty five thousand only), towards pain and suffering as well as the amount spent towards medical treatment, with interest thereon at 12% p.a. from the date of petition i.e., 24.12.1998 till the date of deposit with proportionate costs. On deposit, the entire amount shall be released to him.

9. The learned counsel for the appellant mainly submits that the quantum of compensation awarded by the Tribunal is on lower side and hence seeks enhancement of the same.

10. Now, the point that arises for consideration is, whether the compensation of Rs.25,000/- awarded by the Tribunal is reasonable, just and fair; and whether the appellant is entitled to enhancement of compensation.

11. The petitioner sustaining grievous injury i.e., fracture of shaft of left femur and being treated in Osmania General Hospital, Hyderabad, as per Ex.A4 from 18.10.1997 to 15.11.1997 by undergoing surgical intervention on 4.11.1997 are all not in dispute. So far as the disability certificate issued by the Medical Officer under

Ex.A5 is concerned, since the Doctor is not examined, the disability of 50% mentioned therein cannot be agreed. But it cannot be doubted that the claimant himself has suffered temporary disability and temporary loss of earnings for quite sometime on account of fracture of left leg. The Tribunal awarded a sum of Rs.25,000/- without quantifying under various heads as required by the provisions of the Act.

12. Be that as it may, when kept in view, the nature of grievous injury i.e., fracture of shaft of left femur and surgical intervention, the amount of Rs.25,000/- (Rupees Twenty five thousand only) granted towards pain and suffering as well as the amount spent for medical treatment, which in my view needs to be enhanced. Accordingly, a sum of Rs.40,000/- (Rupees Forty thousand only) is awarded as against Rs.25,000/- (Rupees Twenty five thousand only) towards pain and suffering as well as the amount spent for medical treatment.

13. It appears that the Tribunal below did not award any amount towards extra nourishment, attendant charges and loss of earnings. When the claimant has sustained grievous injury and undergone surgical intervention, a sum of Rs.12,000/- (Rupees Twelve thousand only) (i.e., Rs.2,000/- x 6 months) is awarded to the claimant towards loss of earnings, as he was working as a cleaner. There has been some discussion as to shortening of leg and limping due to the accident and the percentage of disability is, certainly, on higher side.

Though, the extent of shortening of leg is forthcoming, but for want of examination of the Doctor it is difficult to view that the claimant proved sustaining permanent disability. However, towards extra nourishment, a sum of Rs.10,000/- (Rupees Ten thousand only) and Rs.6,000/- (Rupees Six thousand only) towards attendant charges for a period of three months at the rate of Rs.2,000/- per month, and a further sum of Rs.2,000/- (Rupees Two thousand only) towards transportation charges are granted.

14. In the result, the Appeal is partly allowed while enhancing the compensation from Rs.25,000/- (Rupees Twenty five thousand only) to Rs.70,000/- (Rupees Seventy thousand only) against the respondents 1 and 2 with joint and several liability. The rate of interest at 12% p.a. granted by the tribunal on Rs.25,000/- shall be maintained but on the enhanced amount of Rs.45,000/- interest at the rate of 7.5% p.a. from the date of claim petition till the date of realization is awarded. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the Civil Miscellaneous Appeal shall stand closed.

A. SHANKAR NARAYANA, J

Dt. 02.08.2017

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