

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A.No.113 of 2006

JUDGMENT:

This appeal, under Section 173 of the Motor Vehicles Act, 1988 (for brevity 'the Act'), is preferred by the appellant aggrieved by the order and decree dated 27.10.2005 in M.V.O.P.No.208 of 2002 passed by the Chairman, Motor Accidents Claims Tribunal-cum-IV Additional District Judge, Kakinada, East Godavari District (for brevity 'the Tribunal'), seeking enhancement of compensation for the injuries sustained by him in a motor vehicle accident.

2. Appellant is the petitioner, respondent No.1 is the driver of the offending Auto bearing No.AP 5X 7649, respondent No.2 is the owner of the said Auto, and respondent No.3 - New India Assurance Company Limited is the insurer, with which the said Auto was insured, in M.V.O.P.No.208 of 2002. For the sake of convenience, the parties are referred to as they were arrayed in the O.P. before the Tribunal.

3. The brief facts of the case are that, on 27.10.2001, while the petitioner was going on a cycle from his house to a shop and when he reached near Super Bazar, Kakinada, an Auto bearing No.AP 5X 7649 came from his rear side driven by its driver in a rash and negligent manner without blowing horn and dashed against the petitioner, due to which the petitioner fell down and received grievous fracture injuries to his left shoulder, arm and left thigh (middle) and he was admitted in Government General Hospital,

Kakinada and underwent operations for the said injuries. The petitioner was 51 years old by the date of accident, doing bangles business and earning Rs.3,000/- per month and due to the said injuries, he could not attend to his business for a period of three months and incurred heavy expenditure for his treatment and thus, he filed the above O.P. claiming compensation of Rs.1,00,000/- against respondent Nos.1 to 3 with interest @ 18% per annum for the injuries sustained by him in the said accident.

4. Respondent Nos.1 and 2, who are driver and owner, respectively, of the offending Auto remained exparte. Respondent No.3 – insurer of the Auto filed written statement denying its liability for violation of the terms and conditions of the Insurance Policy and sought for dismissal of the claim petition.

5. The Tribunal, on consideration of the pleadings of the respective parties and evidence on record by examining P.Ws.1 and 2 and marking of documents under Exs.A.1 to A.4 and Ex.X-1 – Case Sheet with x-ray adduced on behalf of the petitioner, and Ex.B.1 – Copy of Insurance Policy adduced on behalf of respondent No.3, by the impugned order and decree dated 27.10.2005, has awarded a compensation of Rs.22,000/- under various heads with interest at 6% per annum from the date of petition till the date of realization, while holding that respondent Nos.1 to 3 are jointly and severally liable to pay the said compensation. Having dissatisfied with the said amount of compensation, the appellant-petitioner has preferred the present appeal seeking enhancement of compensation.

6. Heard the arguments of Sri Jayakanth, counsel representing Sri N.V. Anantha Krishna, learned counsel for the appellant-petitioner; and Sri T. Ramulu, learned Standing Counsel for respondent No.3 – insurer and perused the material on record, including the order under challenge.

7. The point for consideration in this matter is, whether the appellant-petitioner is entitled for enhancement of compensation.

8. At the outset, this is an appeal preferred by the petitioner seeking enhancement of compensation for the injuries sustained by him in the accident. On consideration of the facts and evidence on record, the Tribunal held that respondent Nos.1 to 3 are responsible for the accident and accordingly awarded a compensation of Rs.22,000/- under various heads.

9. The injuries sustained by the petitioner in the accident are (i) one grievous injury, and (ii) one simple injury. In this regard, the evidence of P.W.2 – Doctor, who conducted operation on the petitioner in a Private Nursing Home, is relevant. He is the same Doctor, who examined the petitioner in Government General Hospital, Kakinada and found injuries on him and issued Ex.A.2 - Wound Certificate dated 05.12.2001. The petitioner also filed Ex.X-1 – Case Sheet along with X-ray maintained by the Government General Hospital, Kakinada, pertaining to the petitioner. Ex.A.4 is the Bunch of prescriptions filed by him. P.W.2 deposed that an amount of Rs.15,000/- was sufficient to perform operation and other expenditure, like Nursing Charges, Private

Hospital charges etc. Therefore, relying on the evidence of P.W.2, the Tribunal has rightly awarded a sum of Rs.15,000/- towards operation charges. Though the petitioner claimed Rs.10,000/- towards loss of earnings, the Tribunal did not award any amount under the said head, stating that the petitioner failed to establish his income prior to the accident. The observations of the Tribunal, in this regard, are wholly unreasonable. The petitioner had clearly stated that he was aged 51 years, doing business in bangles and earning Rs.3,000/- per month, and due to the injuries sustained by him, he could not attend to his business for three months. The Tribunal ought to have considered the notional income of the petitioner for awarding compensation towards loss of earnings. If the notional income of the petitioner is taken into consideration as Rs.3,000/- per month, for three months, the loss of earnings would come to Rs.9,000/-.

10. The petitioner claimed Rs.5,000/- towards extra-nourishment, however, the Tribunal did not award any amount under that head. It is pertinent to note here that the petitioner had suffered one grievous injury and one simple injury. He had taken treatment in a Government Hospital and also undergone operation in a Private Hospital. In spite of all these facts and the evidence of P.W.2 – Doctor, who operated the petitioner, the Tribunal has not awarded any amount towards extra-nourishment. Therefore, an amount of Rs.5,000/- is awarded towards extra-nourishment, as claimed by the petitioner.

11. The Tribunal awarded Rs.5,000/- towards fracture injury and Rs.1,000/- towards simple injury. However, keeping in view the facts and circumstances and the evidence on record, the same is enhanced to Rs.25,000/- and Rs.5,000/-, respectively.

12. Though the petitioner claimed Rs.10,000/- towards mental agony, pain and suffering, the Tribunal has awarded only Rs.1,000/- under that head. However, in view of the facts and circumstances of the case, it would be appropriate to award the said amount of Rs.10,000/-, as claimed, and the same is accordingly awarded.

13. The petitioner claimed Rs.32,500/- towards loss of future earnings and permanent disability suffered by him. As a matter of fact, P.W.2 – Doctor, who treated the petitioner, had categorically deposed that there is no disability sustained by the petitioner due to the injuries suffered and the operation undergone by him. As far as future loss of earnings is concerned, since there is no evidence to show that the petitioner suffered any disability, he is not entitled for any compensation under that head. Thus, the petitioner is entitled for a total compensation of Rs.69,000/- (i.e., Rs.9,000/- towards loss of earnings; Rs.25,000/- towards fracture injury; Rs.5,000/- towards simple injury; Rs.15,000/- towards operation charges; Rs.5,000/- towards extra-nourishment, Rs.10,000/- towards mental agony, pain and suffering).

14. In the result, the appeal is allowed in part, enhancing the compensation awarded by the Tribunal from Rs.22,000/- to Rs.69,000/- (Rupees sixty nine thousand only) with proportionate costs and interest @ 6% per annum from the date of petition till the date of realization. In all other aspects, the order of the Tribunal shall remain unaltered. No order as to costs.

15. Consequently, Miscellaneous Petitions pending, if any, shall stand closed.

GUDISEVA SHYAM PRASAD, J

15.09.2017.
Msr



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