

THE HON'BLE MR JUSTICE N.BALAYOGI

MACMA NO.700 OF 2009

JUDGMENT:

The appellant/claimant, aggrieved by the Award and decree dated 10.04.2007 made in O.P.No.530 of 2003 on the file of Motor Accident Claims Tribunal-cum-III Additional District and Sessions Judge, (FTC), Nizamabad, preferred this appeal on the following among other grounds that the Tribunal erred in considering evidence of PWs.1 and 2 and Exs.A.3 and A.7 while awarding compensation.

2. Further, the Tribunal ought to have considered the loss of salary under future promotion during the treatment and also failed to grant compensation for injuries and consider expenditure towards transportation, extra-nourishment and future treatment.

3. The brief facts of the claim petition are that the claimant while working as Head Constable, by the date of accident, performing vehicle checking duties at N.T.R.Chowrasta, Nizamabad, a motor cycle bearing No.AP 25 H 3306, came with high speed in a rash and negligent manner and dashed him and including others.

4. In the accident, the claimant sustained fractures to the right upper limb, lower end of radius and received other multiple and grievous injuries on hands, back, head, legs and other parts of the body. Immediately, he was shifted to the District Headquarters Hospital, Nizamabad for treatment and later shifted to the Amrutha Laxmi Multi Specialty Hospital and took treatment there as inpatient from 04.11.2002 to 07.11.2002 and incurred an expenditure of Rs.50,000/- towards

medicines, besides that he spent Rs.20,000/- towards extra nourishment.

5. The contention of the 1st respondent/insurance company is that the rider of the motor cycle has no effective and valid driving license at the time of accident. The Tribunal well considered both oral and documentary evidence and awarded the compensation.

6. Before the Tribunal, to prove the claim, the claimant himself examined as PW.1 and the doctor, who treated the claimant was examined as PW.2 and marked Exs.A.1 to A.7 and Ex.X.1. No witnesses were examined on behalf of the respondents, but Ex.B.1 policy copy was marked.

7. With regard to the nature and gravity of the injuries, there is evidence of PW.1 and PW.2-doctor, besides medical record under Exs.A.3 to A.7 and Ex.X.1-case sheet.

8. The consistent evidence of PW.1 is that he sustained fracture to the right upper limb, lower end of radius and received other multiple and grievous injuries on hands, back, head, legs and other parts of the body and immediately he was shifted to District Head Quarters hospital where he took first aid, later shifted to the private hospital i.e. Amrutha Laxmi Multi Specialty Hospital, where PW.2 is working as doctor. Ex.A.3 is the wound certificate, according to which, PW.1 sustained grievous injury to the right leg bones and other multiple and grievous injuries all over the body and PW.2-doctor was also found swelling on the right wrist and X-ray taken showed fracture of intra-articular wrist joint.

9. Ex.A.4 is the discharge summary, according to which, PW.1 admitted on 04.11.2002 and discharged from the hospital on 07.11.2002

and there is a fracture of lower end of the radius. P.W.2 found swelling on the right wrist and Ex.A7-x-rays were taken and the same was mentioned in Ex.X.1-case sheet, which reveals fracture of intra articular wrist joint. The evidence of PW.2 further goes to suggest that Ex.A.6-prescriptions and lab reports were from their hospital and Ex.A.7-X-rays were taken in the hospital. Medicines under Ex.A.6 were prescribed by PW.2. Medicines under Ex.A.5 were also purchased as prescribed by the hospital for treatment.

10. There is no rebuttal evidence to the evidence of PWs.1 and 2 and Exs.A.1 to A.7 and Ex.X.1. Ex.X.1 shows that the claimant admitted in the hospital on 04.11.2002 and discharged on 07.11.2002. Absolutely, there is no convincing evidence to establish any loss of income to the claimant. Since there is no evidence, the Tribunal rightly not awarded any amount towards loss of salary.

11. The evidence of PW.1 corroborates with PW.2 supported by Exs.A3 to A.7 and Ex.X.1 goes to suggest that PW.1 sustained only one fracture injury i.e. fracture of intra articular wrist joint. For the said injury, the Tribunal awarded Rs.5,000/-, which is very meager and required modification.

12. Further towards medicines, though PW.1 deposed that he incurred Rs.50,000/- towards medicines and incidental charges and spent Rs.20,000/- towards extra nourishment did not produce any oral or documentary evidence, except Ex.A.5-medical bills for a sum of RS.7,746/-, which was allowed by the Tribunal towards medicines, which does not warrant any interference.

13. Having considered the nature of injuries i.e. fracture of intra articular wrist joint, which is grievous, it is just and reasonable to award Rs.30,000/- towards fracture injury and Rs.10,000/- towards extra nourishment and another Rs.10,000/- towards pain and suffering, Rs.2,000/- towards transportation and RS.1,000/- towards damages to cloths. In all the claimant is entitled for Rs.53,000/-.

14. By virtue of Ex.B.1-policy, which is in force, the 2nd respondent is the owner of the offending vehicle and the 1st respondent as its insurer, the respondents 1 and 2 are jointly and severally liable to pay the award amount to the claimant.

15. Accordingly, the appeal is allowed with proportionate costs modifying the award, awarding an amount of Rs.53,000/- towards compensation with interest @ 7.5% per annum from the date of petition i.e. on 23.04.2003 till the date of deposit.

16. The respondents are directed to deposit the aforesaid compensation, less the amount if any already paid, within 30 days from the date of receipt of a copy of this order.

17. On such deposit the claimant is permitted to withdraw the same.

18. The Advocate fee is fixed at Rs.2,000/-.

Miscellaneous petitions if any pending in this appeal shall stands dismissed.

N.BALAYOGI, J

Date: 14.07.2017
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