

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.NO.793 OF 2006

JUDGMENT

This appeal is filed by the claimant/injured against the judgment dated 12.9.2005 passed by the Motor Accident Claims Tribunal (II Additional District Judge (Fast Track Court), Nizamabad in O.P.No.179 of 2000, seeking enhancement.

The case of the claimant is that on 10.12.1999 at about 12.30 p.m. when he was travelling on motor cycle bearing No.AP-10-M-4097 from Balkonda towards Armour side and that when he reached at Chitapoor village shivar (outskirts) on Nagpur-Hyderabad National High Road, jeep bearing No. AP-25-T5126, came from opposite direction on the wrong side of the road, driven by its driver in a rash and negligent manner at high speed and dashed against the motorcycle of the claimant. Due to which, he fell down and front wheel of the offending vehicle ran over the claimant. The claimant sustained fracture of left leg, right foot, skull and injuries on other parts of body. Immediately, he was shifted to Government Hospital,* Nizamabad. Subsequently shifted to private hospital i.e., Pragathi Nursing Home, Nizamabad, where his left leg was operated and rod was inserted. Even now he is taking treatment in the private hospital. He incurred an amount of Rs.60,000/-. Due to the injuries and fractures in the accident, the claimant is unable to move from bed, cannot walk and work and his future earnings are affected and he became dependant on others. He sustained permanent

disability. Therefore, the claimant filed the claim petition under 166(1)(a) of the Motor Vehicles Act, 1988 claiming compensation of Rs.1,80,000/-.

The owner of the crime vehicle remained ex parte. The insurer of the crime vehicle filed counter affidavit denying the averments made in the claim petition and sought for its dismissal.

To prove his claim, the claimant got examined himself as P.W.1 and the doctor who treated him, as P.W.2 and also got marked Exs.A-1 to A-6. On behalf of the insurance company, no witness was examined and only copy of the insurance policy was marked as Ex.B-1.

The Tribunal appreciating the evidence on record, granted an amount of Rs.15,000/- for one grievous injury, Rs.5,000/- towards medicines and extra nourishment, Rs.5,000/- towards pain and suffering and thus in all granted compensation of Rs.25,000/- with interest at the rate of 7.5 per cent per annum from the date of petition till the date of deposit. The compensation amount was made liable to be paid by both the insured and the insurer. Not being satisfied with the compensation awarded by the Tribunal, the claimant filed the present appeal for enhancement.

The learned counsel for the appellant/claimant submits that the claimant has suffered two grievous injuries and 55 per cent disability. He further submits that the doctor P.W.2, who treated the claimant, had categorically deposed that the claimant suffered 55 per cent disability. But the Tribunal in all granted only an amount of Rs.25,000/- which is meagre and prayed to enhance the compensation.

On the other hand, the learned Standing Counsel for the 2nd respondent – Insurance Company contended that the Tribunal had taken all the factors into consideration and granted just and reasonable compensation based on record and there are no reasons to enhance the compensation. Therefore sought to dismiss the appeal.

In view of the rival contentions put forth by both counsel, the point that arises for determination is whether the appellant is entitled for enhancement of compensation?

The Tribunal based on the evidence of the claimant, who was examined as P.W.1 and considering the contents of Exs.A-1 and A-2, which are certified copies of FIR and charge sheet and as no rebuttal evidence was led by the insurance company, categorically recorded finding of fact that the claimant was travelling on his motor cycle from Balkonda to Armoor side, and the offending vehicle came from opposite direction and dashed against the motor cycle of the claimant, causing injuries to him and that the accident took place due to rash and negligent driving of the driver of the offending vehicle, there is nothing to take a different view.

The appellant, who was examined as P.W.1 clearly and categorically deposed that in the accident, his right leg at knee and foot were fractured and his skull also fractured and that he received injuries on various parts of the body. P.W.2 is the Civil Assistant surgeon, Government Hospital, Nizamabad, where the claimant was inpatient for six days. He deposed that the claimant suffered two injuries viz., med tarsal sprain right foot; and 2.

dislocation of the hip joint right side and that out of two injuries, first injury is simple and the second injury is grievous. He further deposed that he issued Ex.A-5 disability certificate, assessing the disability at 55 per cent. The Tribunal had not taken the said disability certificate under Ex.A-5 into account to grant compensation, since it is the Medical Board, which has to assess the disability and issue certificate. Therefore, no different opinion can be substituted.

As seen from the evidence and the documents marked on behalf of the appellant, he suffered two injuries and was inpatient for six days in the Government hospital, therefore, taking into consideration the injuries and the facts and circumstances, an amount of Rs.15,000/- can be granted for pain and suffering in stead of Rs.5,000/- granted by the Tribunal, which is accordingly modified.

As far as the amount granted under other heads is concerned, in my considered view, the Tribunal awarded just and reasonable compensation and hence no interference is warranted.

As seen from the material on record, the offending vehicle is insured with the 2nd respondent and there is no violation of policy conditions under Ex.B-1 as on the date occurrence of accident, therefore, the Tribunal made the owner and the insurance company jointly and severally liable to pay the compensation.

The owner remained ex party before the Tribal and the appeal against him was dismissed for default. It is settled principle that this cannot be a bar to proceed against the insurance company and owner of vehicle.

In the result, the compensation awarded by the Tribunal is enhanced to Rs.35,000/- from Rs.25,000/- with interest at the rate of 7.5 per cent per annum from the date of the petition till the date of realization. On deposit of the amount, the appellant is permitted to withdraw the same.

The appeal is accordingly allowed in part. No order as to costs.

Miscellaneous petitions pending if any, shall stand closed.

DATE: 17—03—2017

AVS



DR. SHAMEEM AKTHER, J