

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.4218 OF 2004

JUDGMENT:

The present Appeal is preferred by respondent No.2 - M/s. United India Insurance Company Limited in O.P. No.767 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal - cum - IV Additional Chief Judge, City Civil Court, Hyderabad (for short 'Tribunal') under Section 173 of the Motor Vehicles Act, 1988 (for short 'Act'), challenging the order and decree, dated 23.01.2003, in the aforesaid O.P., whereby and where-under, the Tribunal has awarded a sum of Rs.87,000/- with interest at 9% per annum thereon as compensation as against the amount of Rs.1,00,000/- laid by the petitioner therein under Section 166 read with 140 of the Act.

2. Respondent No.2 and appellant herein, who are owner and insurer of Hero Honda Motorcycle bearing registration No.AP 9AE 7352, are respondent Nos.1 and 2, respectively, in the aforesaid O.P. while respondent No.1 is the petitioner

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in O.P.

4. Heard Sri B. Parameswara Rao, learned counsel for respondent No.1 - petitioner. No representation for the learned standing counsel for the appellant. The appeal against respondent

No.2, owner of the vehicle, was dismissed for default, by order, dated 08.02.2016, but the same would not make any difference in deciding the controversy herein as he remained *ex parte* before the Tribunal and suffered a decree.

5. The learned standing counsel for the appellant mainly questioning the grant of Rs.27,000/- under the head of loss of leave for a period of three months on the ground that the leave certificate marked by respondent No.1 herein himself, who is petitioner in the aforesaid O.P., would show that he has gone on leave only for 25 days. Of course, in the grounds of appeal, the other grounds were agitated as to granting of Rs.40,000/- for fractures on higher side and against the judgment of this Court reported in 2003 (5) ALD 612, and the FIR would show that the provision of law as 337 of IPC, which do not require any deliberation for the reason the medical report would show that the petitioner sustained fractures.

6. The details are clearly mentioned by the Tribunal in paragraph No.2 of his order. He has, in fact, discarded the permanent disability of 15% on the premise that the doctor, who issued certificate - Ex.A-4 was not examined. Be that as it may, the amount of Rs.40,000/- granted towards fracture of both bones of right leg cannot be disturbed, and even the amount of Rs.10,000/- each towards pain and suffering and medical expenses.

7. So far as the award of Rs.27,000/- towards three months temporary loss of earnings is concerned, Ex.A-8, leave certificate exhibited by the petitioner would show that he was on leave for 25 days from 06.11.2000 to 30.11.2000 on private affairs. When kept in view, the said entry, it cannot be said that the petitioner suffered loss of temporary earnings and there is no cogent reason why the Tribunal inclined to take three months as against 25 days which is proved through documentary evidence Ex.A-8. To that extent, the Tribunal went wrong in appreciating the evidence on proper lines. Therefore, for the period of 25 days only he is entitled for loss of temporary earnings. His earnings are shown at Rs.10,019/- as per Ex.A-9, which pertains to the month of September, 2002, whereas as per the evidence of petitioner, he was drawing a salary of Rs.9,000/- per month, and taking into consideration, the evidence of PW.1, the Tribunal granted a sum of Rs.27,000/- for three months loss of temporary earnings. But, in view of Ex.A-8, the petitioner is only entitled to 25 days but not for a period of three months and, thus, he is entitled to Rs.7,500/- for a period of 25 days as against Rs.27,000/- granted by the Tribunal and accordingly reduced it.

8. Thus, the appeal is allowed in part, and the order and decree, dated 23.01.2003, passed by the Tribunal in O.P. No.767 of 2001 are modified reducing the compensation to Rs.67,500/- (Rupees sixty seven thousand and five hundred) from Rs.87,000/- with interest at

9% per annum from the date of petition till date of realization., and in all other respects, the order and decree is confirmed. There shall be no order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

August 11, 2017.

Mgr

