

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No.143 of 2006

JUDGMENT :

This Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for brevity "the Act"), is preferred by the appellant/petitioner challenging the judgment and decree dated 31.01.2005 in O.P.No.195 of 2001 passed by the Chairman, Motor Accident Claims Tribunal (II Additional District Judge), Nizamabad (for brevity "the Tribunal"), dismissing the claim laid by him under Section 166 of the Act, seeking compensation of Rs.2,00,000/- for the injuries sustained by him in a motor accident that occurred on 31.03.2000.

2. Appellant is the petitioner, respondent No.1 is the owner of offending Jeep bearing No.AP 25T 5485 and respondent No.2 - Oriental Insurance Company Limited is its insurer. For the sake of convenience, the parties are referred to as they were arrayed in O.P.No.195 of 2001 before the Tribunal.

3. The brief facts of the case are that on 31.03.2000 at about 3.00 p.m., while the petitioner was proceeding to Dichpally on his bicycle for purchasing kirana articles, a Jeep bearing No.AP 25T 5485, which was driven in a rash and negligent manner by its driver, dashed against his bicycle and as a result of which he fell down and sustained injuries on his

head, mouth and right leg and that his right leg and collar bone were fractured and that 8 of his teeth were broken and he was admitted in Government Hospital, Nizamabad, for first aid and subsequently he was shifted to Hyderabad for treatment, where 15 sutures were applied to his head injury and, therefore, he filed the above claim petition claiming compensation of Rs.2,00,000/- against respondent Nos.1 and 2.

4. The Tribunal, on consideration of the evidence of P.Ws.1 and 2 and the documentary evidence under Exs.A.1 to A.6, dismissed the claim petition by judgment and decreed dated 31.01.2005, holding that the petitioner failed to substantiate his claim for compensation by proving the nature of injuries suffered by him in the accident. Aggrieved by the same, the petitioner has filed the present appeal.

5. Learned counsel for the petitioner contended that though the petitioner received injuries in the accident and the Tribunal has answered Issue No.1 in his favour holding that the accident occurred due to the rash and negligence on the part of the driver of the offending Jeep, it did not award any compensation to the petitioner by disbelieving the evidence of P.W.2 – Medical Officer, who treated the petitioner. Learned counsel for the petitioner submitted that the petitioner has received one grievous injury and two simple injuries in the accident. He submits that Ex.A.3 is the Certified copy of

Wound Certificate, which reveals that the petitioner has received defused contusion on the right anterior chest and that the other is loosening of upper incisors and that the third one is a lacerated injury caused on the left parietal region measuring 2 x 4 inches. It is further submitted that P.W.2, who is a Orthopedic Surgeon, has treated the petitioner and issued Ex.A.3 – Wound Certificate and Ex.A.4 Medical Prescriptions, which clearly reveal about the injuries sustained by the petitioner. However, the Tribunal did not award any compensation towards the injuries.

6. Heard learned counsel for the appellant-petitioner. Despite service of notice, learned Standing Counsel for respondent No.2 is not present nor there is any representation on her behalf.

7. At the outset, while the petitioner was going on his bicycle, the offending Jeep came in an opposite direction in a rash and negligent manner and dashed against the bicycle of the petitioner, as a result of which the petitioner received injuries in the said accident. Though the Tribunal held that the accident occurred due to the rash and negligent driving by the driver of the Jeep, it dismissed the claim by disbelieving the evidence produced by the petitioner holding that there is inconsistency in the averments made in the claim petition and the medical evidence adduced by P.W.2. It is obvious that the accident is proved by the petitioner.

Ex.A.1 – Certified copy of FIR, Ex.A.2 – Certified copy of Charge Sheet, Ex.A.3 – Certified copy of Wounds Certificate, and Ex.A.4 – Medical prescriptions clearly reveal that the petitioner has received one grievous injury and two simple injuries in the accident. No doubt, in this case, the petitioner has not produced the X-Rays pertaining to the grievous injury suffered by him and there is some inconsistency in the claim petition and Ex.A.3 Certified copy of Wound Certificate regarding the injuries suffered by him.

8. Further, Ex.A.5 is the Disability Certificate said to have been issued by Dr. K. Laxmi Narayana, as per which the petitioner has suffered 60% disability. However, the Tribunal disbelieved the said Certificate on the ground that there is no satisfactory evidence adduced by P.W.2 - Medical Officer. The Medical Officer stated that there was a grievous injury to the chest bone of the petitioner, but he could not name the bone to which the said injury was caused. Therefore, the Tribunal has rightly disbelieved the evidence of the petitioner with regard to the disability of 60% sustained by him as the petitioner failed to prove Ex.A.5 – Disability Certificate filed by him. However, having regard to the voluminous evidence available on record, which clinchingly establishes the fact that the accident had occurred in which the petitioner received some injuries and, therefore, the Tribunal ought to have granted some compensation to the petitioner. Therefore,

on consideration of the medical evidence with regard to the injuries sustained by the petitioner and in the interest of justice, it is just and proper to award a sum of Rs.25,000/- towards compensation for the injuries sustained by the petitioner.

9. In the result, the Civil Miscellaneous Appeal is allowed in part, setting aside the impugned judgment dated 31.01.2005 and awarding compensation of Rs.25,000/- (Rupees twenty five thousand only) with proportionate costs and interest @ 7.5% per annum from the date of petition till the date of realization against respondent Nos.1 and 2 jointly and severally. The respondents are directed to deposit the compensation amount within one month from the date of receipt of a copy of this judgment. On such deposit, the appellant/petitioner is permitted to withdraw the entire amount of compensation. No order as to costs.

10. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

GUDISEVA SHYAM PRASAD, J

26.10.2017.
Msr

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