

THE HON'BLE MS. JUSTICE J. UMA DEVI

MACMA NO. 1687 of 2005

JUDGMENT:

Heard learned counsel for the appellant as well as learned standing counsel appearing for the respondent No.2-insurance company.

The parties are hereinafter referred to as they are arrayed before the Tribunal.

This appeal is filed by the claimant-injured against the award dated 20.12.2004 passed by the Motor Accident Claims Tribunal-cum-IV-Addl. District Judge, Nizamabad in OP No. 224 of 1999 seeking enhancement of compensation amount.

The facts, in brief, are that the on 2.2.1999 while the petitioner was travelling in an Auto from Dichpally towards Jannepally side and when it reached Dharmaram village shivar, Badipur X-road at about 12.00 noon, the auto turned turtle due to the rash and negligent driving of it's driver and the petitioner sustained fracture of his left ankle, left ribs and injuries on head, hand and other parts of the body. The petitioner was taken to Government Head Quarters Hospital, Nizamabad where he was operated and a rod was inserted. The petitioner took treatment from private hospital also and incurred an expenditure of Rs.1,00,000/-. The petitioner states that he was hale and healthy and used to attend agriculture and labour work and earning Rs.6,000/- per month, but due to the accident he was unable to move from bed, could not walk and work and his future earnings and amenities were affected. First respondent is the owner of the offending auto and second

respondent is the insurer of the said auto. The petitioner claimed a total compensation of Rs.2,00,000/-.

First respondent did not file any counter. Second respondent-insurance company filed a counter denying the averments made by the petitioner and contended that the driver of the auto was not having a subsisting driving licence to drive the auto and the vehicle was not road worthy with valid permit and fitness to ply and that the compensation amount claimed by the petitioner is highly excessive and prayed to dismiss the petition.

The petitioner examined himself as P.W.1 and doctor as P.W.2 who treated the petitioner and got marked Exs.A1 to A9, Exs.X1 and X2 and Exs.C1 and C2. Ex.A1 is the copy of FIR, Ex.A2 is the copy of charge sheet, Ex.A3 is the copy of wound certificate, Ex.A4 is the discharge ticket, Ex.A5 is the prescription issued by doctor, Ex.A6 is the medical bills (2), Ex.A7 is the photo with negative, Ex.A8 is the Xerox copy of insurance receipt, Ex.A9 is the X-ray Film, Ex.C1 is the disability certificate, Exc.C2 is the X-ray film, Ex.C-1 is the MLC X-ray and Ex.C-2 is the case sheet. The respondent No.2-insurance company examined it's senior Assistant as R.W.1 and marked Ex.B1-copy of insurance policy.

The Tribunal, on appreciation of oral and documentary evidence adduced by the parties, held that the accident occurred due to the rash and negligent driving of the offending auto by its driver and granted compensation of Rs.5,000/- for grievous injury, Rs.1,000/- for simple injuries, Rs.21,300/- towards medical expenditure, Rs.5,000/- towards pain and suffering and extra nourishment and transportation and Rs.4,500/- for loss of earnings for a period of three months, totaling to Rs.36,800/- with

proportionate costs and interest @ 9% P.A. payable by the respondents 1 and 2 jointly and severally.

Having been dissatisfied with the compensation amount awarded by the Tribunal, the present appeal is filed by the petitioner-injured.

There is no dispute with regard to occurrence of accident, but to the extent of quantum of compensation awarded by the Tribunal. It is contended by the learned counsel for the appellant-injured that though ample evidence is there on record i.e., oral evidence of P.W.2, doctor who treated the appellant and Ex.X2 and other documentary evidence that the appellant sustained grievous injury to his left ankle and was admitted in Nizam hospital, Nizamabad on 3.2.1999, and underwent operation for insertion of a rod on 15.2.1999 and was discharged from the hospital on 3.3.1999, the Tribunal awarded a meagre compensation amount of Rs.5,000/- in respect of fracture injury to ankle which was of grievous in nature. The learned counsel also submits that the appellant was earning Rs.10,000/- per month by selling vegetables and during the period of his hospitalization, he sustained loss of his income and therefore, he seeks to enhance the compensation amount.

The learned standing counsel appearing for the respondent No.2- insurance company supported the award of the Tribunal and submitted that the compensation awarded by the Tribunal is just and reasonable and it needs no interference.

It is evident from the material on record that P.W.2, the doctor who examined P.W.1, the appellant, clearly stated that the appellant sustained fracture of left ankle, tenderness over the left thigh and injury to chest and he was of the opinion that the first injury is grievous in nature and other two

injuries are simple in nature. As per Ex.A5, the appellant took treatment in Nizam Hospital at Nizamabad from 3.2.1999 to 3.3.1999, P.W.2 conducted operation on 15.2.1999. Since there is medical evidence of P.W.2 coupled with Exs.A3 to A9 and other documentary evidence that the appellant sustained a grievous injury to his left ankle, I am of the opinion that the compensation of Rs.5,000/- awarded by the Tribunal towards this injury is quite meager and low and I deem it appropriate to award a sum of Rs.15,000/- (Rupees Fifteen Thousands only) in addition to Rs.5,000/- awarded by the Tribunal, in regard to nature of injury sustained at the ankle portion. The appellant is thus entitled to a total compensation of Rs.51,800/- and the same is rounded off to Rs.50,000/- (Rupees Fifty Thousands only). Rest of the award passed by the Tribunal is upheld. It is stated that the appellant has already withdrawn the compensation amount awarded by the Tribunal. The appellant is entitled to withdraw the enhanced compensation amount along with accrued interest.

The appeal is accordingly allowed in part. There shall be no order as to costs. Miscellaneous applications, if any pending, shall stand closed.

Dt. 6.2.2017
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