

HON'BLE SMT. JUSTICE T. RAJANI

M.A.C.M.A. No.145 of 2008

JUDGMENT :

This Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988, is preferred by the appellant/petitioner assailing the order and decree dated 08.10.2007 in M.V.O.P.No.243 of 2001 passed by the Chairman, Motor Accidents Claims Tribunal-cum-VI Additional District Judge(FTC), Tirupati, Chittoor District (for brevity "the Tribunal"), on the grounds that the Tribunal has not properly appreciated oral and documentary evidence and also did not properly consider the evidence of the Doctor, besides Exs.A.2 and A.3, which are Wound Certificate and permanent Disability Certificate, respectively, issued by the Doctors, that the Tribunal has not considered Ex.A.5 – Salary Certificate of the petitioner, so also Exs.A.7 and A.8, which are prescription issued by Dr. Sasidhar Reddy and bunch of Medical Bills, respectively, which support the claim of the appellant/petitioner towards medical expenses.

2. Heard the arguments of the learned counsel for appellant/petitioner. None appears for the 2nd respondent – Insurer.

3. Though the appellant/petitioner filed Ex.A.8 – bunch of Medical Bills amounting to Rs.13,116/-, the Tribunal, by

observing that the said medical bills were not supported by any prescriptions, granted only a sum of Rs.8,000/- towards medical expenses. Further, though the 2nd respondent/insurer did not challenge Exs.A.7 and A.8 contending that they do not pertain to the medicines required for the treatment of fracture injuries sustained by the petitioner/appellant, the same were not considered by the Tribunal in proper perspective. Therefore, there is absolutely no reason for the Tribunal to disbelieve the said medical bills and hence the balance amount of Rs.5,116/- is also to be awarded towards medical expenses and the same is accordingly awarded.

4. Further, though the appellant/petitioner sustained fracture to his left leg and a simple injury to his left ankle, the Tribunal awarded only Rs.7,000/- towards pain and suffering, which, in the considered opinion of this Court, is very low. Hence, a further sum of Rs.8,000/- is awarded towards pain and suffering caused to the appellant/petitioner due to the fracture to his left leg.

5. Further, there is inconsistency in the statements of P.Ws.4 and 5 as regards the disability sustained by the appellant/petitioner. P.W.5 is not the doctor who treated the appellant/petitioner, it is P.W.4 – Doctor, who actually treated him, who stated that there is no permanent disability sustained by the appellant/petitioner. During cross-

examination also, P.W.5 admitted that he has not operated the appellant/petitioner. Hence, the evidence of P.W.4, who actually treated the appellant/petitioner carries more weight. Therefore, denial of granting any compensation towards permanent disability by the Tribunal cannot be found fault with.

6. Besides the above, the appellant/petitioner is also entitled for transportation charges, which, in all probability, might have been incurred by him as he sustained injury to his left leg. Hence, a sum of Rs.5,000/- is awarded under the head 'Transportation and other incidental charges'.

7. The appellant/petitioner also filed Ex.A.5 - Salary Certificate showing that he was working as a Government Teacher and drawing a gross salary of Rs.9,950/- per month. The Tribunal ought to have considered that the injury suffered by the petitioner, being a fracture injury, would definitely hamper his avocation, atleast for a period of 2 months till he recovers. Though the appellant/petitioner did not examine anyone to prove Ex.A.5 - Salary Certificate, the 2nd respondent/insurer did not seriously dispute the fact that the appellant/petitioner was working as a Government Teacher. Therefore, as a Government Teacher, in all probability, the appellant/petitioner would be drawing the salary as shown in Ex.A.5 - Salary Certificate. Hence, an

amount of Rs.19,906/- is awarded towards loss of earnings during the period of treatment, rest and recovery.

8. In all, the Award of the Tribunal stands enhanced by Rs.38,022/-, which is rounded off to Rs.38,000/- (Rupees thirty eight thousand only). The Award shall relate back to the date of the decree and the enhanced amount shall carry interest at the rate specified and from the time indicated in the Award of the Tribunal.

9. Accordingly, the Civil Miscellaneous Appeal is allowed in part enhancing the compensation amount from Rs.15,000/- to Rs.53,000/- (Rupees fifty three thousand only). In all other aspects, the order of the Tribunal shall remain unaltered. Proportionate costs are ordered.

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

JUSTICE T. RAJANI

06.03.2017.
Msr

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