

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No.196 of 2006

JUDGMENT :

This Civil Miscellaneous Appeal is preferred by the appellants – The New India Assurance Company Limited (insurer) aggrieved by the judgment and decree dated 03.12.2004 in O.P.No.1366 of 2001 passed by the Chairman, III Motor Accidents Claims Tribunal, Warangal (for brevity “the Tribunal”).

2. The appellants herein are respondent Nos.3 and 4; respondent No.1 is the petitioner, and respondent Nos.2 and 3 are respondent Nos.1 and 2 in O.P.No.1366 of 2001. For the sake of convenience, the parties are referred to as they were arrayed in O.P.No.1366 of 2001 before the Tribunal.

3. The brief facts of the case are that the petitioner filed a claim petition in O.P.No.1366 of 2001 under Section 166 of the Act claiming compensation of Rs.4,00,000/- on account of the injuries sustained by him in the motor accident that occurred on 27.02.2001. On the fateful day, the petitioner was proceeding on his Hero Honda Motor Cycle bearing No.AP 36A 2100 from Hasanparthy to Hanamkonda, one Jeep bearing No.MZQ 1165 driven by the 1st respondent – Driver in a rash and negligent manner with high speed came in opposite direction on wrong side and hit the motor cycle of the petitioner. The petitioner received serious injuries in the

said accident and, therefore, he claimed compensation of Rs.4,00,000/- against respondent Nos.1 to 4, who are driver, owner and New India Assurance Company Limited, respectively. The Tribunal on consideration of the evidence of the witnesses P.Ws.1 and 2 and the documents under Exs.A.1 to A.13 and Ex.C.1, has awarded total compensation of Rs.2,40,000/- under various heads. Aggrieved by the impugned Award, the New India Assurance Company has preferred this appeal.

4. Heard the arguments of the learned Standing Counsel for appellants 1 and 2. None appeared on behalf of the respondents, inspite of service of notices to them.

5. Learned Standing Counsel for the appellants submitted that this is a case of injuries. The petitioner has suffered injuries in the accident and filed Ex.A.13 – Orthopaedically Handicapped Certificate dated 12.02.2004 to prove his injuries. Ex.A.13 – Orthopaedically Handicapped Certificate prima facie shows that it was not issued for judicial purpose and, therefore, the said Certificate cannot be taken into consideration for assessment of compensation.

6. The said contention raised by the learned Standing Counsel for the Insurance Company cannot be taken into consideration in view of the evidence of P.W.2 – Medical Officer Dr. P. Kaliprasada Rao. The Tribunal has considered his evidence in para Nos.14, 15 and 16 of its judgment and

arrived at the conclusion with regard to the disability suffered by the petitioner as 40%. P.W.2 is a Orthopaedic Surgeon. His testimony reveals that P.W.1 was admitted in Jaya Hospitals, Hanamkonda on 27.02.2001 with fracture of femur right, fracture of femur left, fracture both bones at right leg, closed head injury, which are grievous in nature, and with a lacerated wound over lip, which is a simple injury. He further deposed that surgery was conducted for injury Nos.1 to 3 by inserting rods and screws. Ex.A.2 is the Wound Certificate issued by him. Ex.C.1 is the Case Sheet, which speaks about the nature and duration of the treatment undergone by the petitioner. He further states that he has issued Ex.A.13 – Orthopaedically Handicapped Certificate dated 12.02.2004 mentioning 40% disability. He has further stated that Ex.A.13 – Orthopaedically Handicapped Certificate was not for judicial purpose and it was meant for the purpose of physically handicapped persons. The Tribunal has rightly taken into consideration the disability of the petitioner as 40%, though it is mentioned in the certificate that it was not meant for judicial purpose, since P.W.2 Medical Officer himself has appeared before the Court and stated that the petitioner has suffered 40% disability and usually the Medical Officer would issue Certificate on assessment of disability. In this case, P.W.2 has assessed the disability and gave Certificate stating that the petitioner has suffered 40% disability. The Medical Officer might have stated that he issued the certificate for the

purpose of “physically handicapped” and not for judicial purpose. The Medical Officer cannot have double standards. The nature of treatment undergone by the petitioner would clearly indicate that he underwent surgery for injury Nos.1 to 3. Therefore, Ex.A.13 – Orthopaedically Handicapped Certificate dated 12.02.2004 clearly indicate that the petitioner had suffered 40% disability. Therefore, there is no need to interfere with the findings of the Tribunal by taking into consideration the disability as 40% for assessing the compensation.

7. Learned Standing Counsel for the appellants submitted that the rate of interest awarded to the petitioner @ 9% per annum is excessive and, therefore, requested to reduce the same.

8. On consideration of the facts and circumstances of the case, as far as the rate of interest is concerned, it was awarded in the year 2006 granting interest @ 9% per annum, which can be reduced to 7.5% per annum in the light of the decision of the Apex Court in DHARAMPAL AND OTHERS Vs. U.P. STATE ROAD TRANSPORT CORPORATION¹.

9. In the result, the Civil Miscellaneous Appeal is allowed in part, by modifying the impugned judgment dated 03.12.2004, reducing the rate of interest from 9% per annum to 7.5% per annum from the date of petition to till the date of

¹ MANU/SC/7680/2008

realization. In all other aspects, the judgment of the Tribunal shall remain unaltered. No order as to costs.

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

JUSTICE G. SHYAM PRASAD

23.10.2017.
Msr



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