

HON'BLE MRS. JUSTICE ANIS

M.A.C.M.A.NO.1366 OF 2010

JUDGMENT:

This appeal is filed by the appellant/petitioner under Section 173 of the Motor Vehicles Act, 1988 (for short "M.V.Act") aggrieved by the award dated 28-04-2010 passed by the Chairman, Motor Accident Claims Tribunal-cum-VIII Additional District Judge, Nizamabad in O.P.No.469 of 2010, awarding compensation of Rs.27,000/- to the appellant/petitioner.

2. The above said O.P is filed under Section 166(1) (a) of the Act by the petitioner claiming compensation of Rs.2,00,000/- for the injuries sustained by him in a motor vehicle accident that occurred on 15-12-2006.

3. The brief averments made in the petition are that on 15-12-2006 when the petitioner was coming on a bicycle and when he reached near Mosra forest nursery, a bus bearing No.AP 10Z 9794 coming from Banswada to Nizamabad at high speed and hit him from behind, as a result he sustained injuries. Immediately, he was shifted to Government Hospital, Nizamabad and later to Gandhi Hospital, Hyderabad for better treatment. He spent Rs.25,000/- towards medical treatment. By the time of accident, he was earning Rs.5,000/- per month by working as wood cutter-cum-labour work. Respondent Nos.1 and 2 being the owner and insurer of the vehicle are, therefore, jointly and severally liable to pay the compensation.

4. Respondent Nos.1 and 2 filed separate counters denying the material allegations of the petition. Their defence is that on the date of accident, driver of the bus was driving the vehicle slowly, but the petitioner was pedalling his cycle at the middle of the road in a *zig zag* manner and even though the driver blew horn in order to avoid accident, the petitioner lost balance of the cycle, came and hit the bus, thereby he sustained injuries. Their further contention is that the accident occurred only on account of fault of the petitioner and there was no rash and negligent driving driver of the.

5. Basing on the above pleadings, the Tribunal framed three issues and to substantiate the claim of the petitioner Pws.1 to Pw.3 were examined and marked Exs.A-1 to A-9 and Ex.X-1 case sheet. On behalf of the respondents, no oral or documentary evidence was adduced.

6. After considering the oral and documentary evidence, the Tribunal held that the accident was occurred only on account of rash and negligent driving of the bus by its driver and awarded compensation of Rs.27,000/- with interest @ 9% per annum from the date of petition till date of realization.

7. Not satisfied with the compensation awarded by the Tribunal, the petitioner preferred the present appeal.

8. The learned counsel for the appellant argued that the petitioner sustained grievous injuries and the Tribunal awarded only meagre amount. Further, the counsel for the appellant argued that the petitioner is unable to do any work as he suffered fracture to his right upper leg. He was continuously not

attending the work due to the injuries sustained by him and more over the petitioner incurred heavy amount towards treatment and prayed the court to enhance the compensation.

9. On the other hand, the learned counsel for the respondents argued that the petitioner has not examined the doctor who treated him in the hospital. Further no disability certificate was filed. Considering the evidence on record, the Tribunal granted just and reasonable compensation and the findings of the Tribunal needs no interference.

10. Having regard to the submissions made by both counsel, the only point that arises for consideration is:-

“Whether the compensation awarded by the Tribunal is just and reasonable and whether the appellant is entitled for enhancement of compensation?”

11. POINT:-

There is no dispute about the manner of accident in which the petitioner sustained injuries due to rash and negligent driving of the driver of the bus. The Tribunal, after having considered the injuries sustained by the petitioner, granted Rs.15,000/- towards pain and suffering; Rs.7000/- towards loss of earnings; Rs.5,000/- towards medical expenses and Rs.3,000/- towards extra nourishment, which cumulatively comes to Rs.30,000/-, has awarded only Rs.27,000/-.

A perusal of the Ex.A-9 case record shows that the petitioner sustained one fracture of lower end of radius and fracture of both bones of right leg upper end. It is no doubt true that the petitioner examined Pws.2 and 3 doctors who examined

subsequently but failed to examine the doctor who treated him in the hospital. Admittedly, the petitioner has not filed any disability certificate in order to prove that he suffered any disability due to the accident. It is no doubt true that after discharge from the hospital, the petitioner must have spent some amount towards medical need and for extra nourishment. Therefore, it is just and proper to grant extra amount of Rs.7,000/- towards medical expenses and Rs.3,000/- towards extra nourishment. Thus, the total compensation payable to the appellant/petitioner under different heads is as follows:-

1. Loss of earnings	Rs. 7,000/-
2. Medical expenses	Rs. 12,000/-
3. Extra nourishment	Rs. 6,000/-
4. Pain and suffering	Rs. 15,000/-
Total	Rs. 40,000/-

12. Accordingly, the compensation awarded by the Tribunal is enhanced from Rs.27,000/- to Rs.40,000/- along with interest @ 9% per annum from the date of petition to till date of realization.

In the result, the appeal is partly allowed. No order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

ANIS, J

03.08.2017
TSNR