

THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

M.A.C.M.A. No. 807 of 2006

ORDER:

This appeal is arising out of the Award and Decree dated 21.12.2005 in O.P.No.387 of 2004 on the file of the Chairman, Motor Accident Claims Tribunal-cum-IV Additional District Judge, at Warangal.

2. The petitioner was a Conductor in APSRTC at Warangal, and while he was on duty on 29.12.2002 in the bus plying from Nizamabad to Hanamkonda, at about 2:50 PM, when the bus reached the outskirts of Gutpa village, Ashok Leyland Mini Lorry bearing No.AP-25T-7312 driven by its driver in a rash and negligent manner, at a high speed, came in opposite direction and initially hit the road margin and then dashed against the APSRTC bus. Many passengers, including the driver and the petitioner, received injuries in the accident. Alleging that the accident occurred due to the rash and negligent driving by the driver of the crime lorry, the petitioner filed claim petition claiming compensation of Rs.3,02,200/- against respondents 1, 2 and 3, the driver, owner and insurer, respectively, of the crime lorry.

3. The Tribunal awarded compensation of Rs.5,000/- with proportionate costs and interest at 7.5% per annum against respondents 1 and 3. Aggrieved by the same, the petitioner filed this appeal seeking enhancement of compensation.

4. The point for consideration in this matter is whether the appellant is entitled for enhancement of compensation.

5. Learned counsel for the appellant-claimant contended that the Tribunal has not considered the medical evidence properly and did not

even look into the record Ex.A3-Out Patient Chit, Ex.A4-Discharge Card and Ex.A5-Case Sheet of the appellant. It is submitted that the appellant has received grievous injuries to his hip. The medical officers have replaced his hip joint and it was a major operation. In spite of the material before the Tribunal, the Tribunal has awarded only Rs.5,000/- which is inadequate compensation for the injuries sustained by the appellant.

6. It is appropriate to refer to the findings of the Tribunal in paragraph 13 of the impugned order, which read as under:

“13. The petitioner also examined PW2-Dr.G. Venkat Rao of Uday Clinic, Hanamkonda. According to PW2 on 31.12.2002, the petitioner came to his clinic with an injury to the right hip which he had suffered on 29.12.2002. According to PW2 upon the X-ray of both the hip joints, he found that the petitioner was suffering from Avascular Necrosis at head of right femur. PW2 advised him to go to APSRTC Hospital, Hyderabad for total joint replacement. He identified Exs.A3 and A4, relating to the treatment of the petitioner. PW2 also deposed with reference to Ex.A5-case sheet issued by APSRTC Hospital, Hyderabad. As per its contents, according to PW2, the petitioner had a surgery in APSRTC hospital at Hyderabad relating to total replacement of hip joint.”

7. The evidence of PW2 would show that he advised PW1 to go to APSRTC Hospital for total joint replacement. Ex.A5 is the case sheet issued by APSRTC Hospital, Hyderabad, and it was confronted to PW2 and he stated that as per the contents of Ex.A5, the petitioner had undergone surgery in APSRTC Hospital, Hyderabad, for total replacement of hip joint.

8. The Tribunal, on consideration of the evidence of PW1, came to the conclusion that the nature of injuries suffered by him was in the year

1988. The Tribunal has observed that the appellant never had any surgery in respect of the injuries sustained by him in the accident.

9. It is obvious from the record that the Tribunal has not considered the evidence of the medical officer inspite of the medical reports. The findings of the Tribunal with regard to the evidence of PW1 in his cross examination also appear to be incorrect. The case of the appellant is that he had received injuries in the accident and he had undergone hip replacement due to the injuries suffered by him in the accident.

10. The Tribunal has not considered all these aspects in proper perspective. It is obvious that the appellant made a claim of Rs.3,02,200/-, whereas the Tribunal has awarded only Rs.5,000/-. If really the Tribunal has disbelieved the version of the appellant, it would have dismissed the Original Petition, instead awarding compensation of Rs.5,000/-, *ex facie* appears that the Tribunal has not appreciated the evidence on record. Therefore, the matter is remitted back to the Tribunal for fresh consideration and for passing appropriate Award.

11. In the result, the matter is remitted back to the Tribunal to consider the matter afresh and pass Award, according to law, within two months from the date of receipt of a copy of this order. No costs. Miscellaneous petitions, if any pending, shall stand closed.

GUDI SEVA SHYAM PRASAD, J

02nd March, 2017

KSM

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