

HONOURABLE SRI JUSTICE N. BALAYOGI

M.A.C.M.A. No. 2127 of 2009

JUDGMENT:

1. The appellant/claimant aggrieved by the Award and decree dated 29.01.2009 passed in O.P.No.143 of 2005 by the learned Chairman, Motor Accident Claims Tribunal-cum-VII Additional District Judge (FTC), Nizamabad, at Bodhan, preferred present appeal mainly on the ground that the Tribunal failed to come to conclusion for awarding proper quantum of compensation despite appreciating the evidence by holding that the appellant/claimant has amply proved that he sustained fracture of left wrist, grievous injury on the left leg, left hand, left shoulder, injuries on head, chest, hands, legs, multiple and grievous injuries on other parts of the body. The Tribunal also failed to appreciate the evidence on record while granting compensation that the appellant/claimant is unable to walk, unable to attend to his regular work, unable to lift weights and also getting pain and giddiness and that he suffered permanent disability.

2. The case of appellant/claimant is that on 2.5.2004 while he along with one Allapuram Kashiram proceeding on bicycle, at about 3.30 PM when he reached near Ramreddy Petrol Bunk, Banswada Shivar, the driver of the van bearing No. AP 25U 7303 having driven the said van in a rash and negligent manner,

with high speed, gave dash to the bicycle from its behind, as a result of which, he (appellant/claimant) and said Kashiram fell down and he sustained multiple and grievous injuries.

3. P.W.1-Dr. M.V.Laxman, who treated P.W.2-appellant/claimant in the Government area Hospital, Banswada, deposed in his evidence that on 2.5.2004, i.e. on the date of accident, he examined P.W.2 and mentioned injuries sustained by him in Ex. A.1-Wound Certificate, namely 1) Fracture to left wrist joint--Grievous in nature; 2) Abrasion over the left leg--Simple in nature; 3) Abrasion on the left hand--simple in nature; and 4) Pain on the left shoulder-Simple in nature. According to the evidence of P.W.1 and Ex. A.1-Wound Certificate, P.W.2 sustained one grievous injury, i.e. fracture of left wrist joint and three other simple injuries over the left leg, left hand and left shoulder.

4. Absolutely there is no medical evidence corroborated to the evidence of P.Ws.1 to the effect that the appellant/claimant suffered permanent disability due to the injuries sustained by him in the motor vehicle accident that occurred on 2.5.2005 at about 3.30 PM involving the van bearing No. AP 25 U 7303.

5. In the charge sheet, Ex. A.3, the Investigating Officer has stated that the driver of the offending van was responsible for the cause of accident and committed the offence punishable under Sections 338 IPC.

6. The material on record goes to suggest that the appellant/claimant has not produced either oral or documentary evidence to prove that he took treatment in the private hospital and incurred Rs.40,000/- towards medical expenses or produced any documentary evidence to prove that he had been taking treatment still. The Tribunal having discussed both oral and documentary evidence elaborately and marshalling the facts, came to the right conclusion that the appellant/claimant failed to prove that he took treatment in the private hospital and incurred Rs.40,000/-towards treatment.

7. However, the Tribunal erred in finding that Injury No.1 is simple in nature ignoring consistent ocular evidence of P.W.2 and medical evidence of P.W.1-Doctor supported by Ex.A.1-Wound Certificate wherein P.W.1 who is the proper to speak about the nature of injuries, specifically stated that Injury No.1 is grievous in nature and Injury Nos. 2 to 4 are simple in nature, more particularly, when there is no rebuttal evidence from the side of the respondents to the evidence of P.Ws.1 and 2 and documentary evidence under Ex. A.1. Accordingly I find that the finding of the Tribunal that Injury No.1 is simple in nature is erroneous, perverse and thereby warrants interference by this Court.

8. Having considered the evidence of P.W.2, which is corroborated by evidence of P.W.1 and supported by

documentary evidence Ex. A.1, it is evident that the appellant/claimant suffered one grievous injury and three simple injuries as mentioned in Ex. A.1, due to which, he is unable to attend his regular work and unable to walk. There being no rebuttal evidence, the Tribunal committed an error in awarding meager compensation of Rs.3,000/-, Rs.2000/-, Rs.1000/- and Rs.1000/- respectively to the aforesaid four injuries forgetting the consistent corroborated evidence of P.W. 1 and that he took treatment in the hospital for about one week. In view thereof, the impugned award suffers from legal infirmities with regard to the finding recorded by the Tribunal that Injury No.1 suffered by the appellant is simple in nature and consequential awarding of meager compensation on that account.

9. Having regard to the evidence on record and for the foregoing discussion, I am of the considered opinion that awarding of Rs.30,000/- to Injury No.1, Rs.4,000/- each to Injuries Nos. 2 to 4, besides awarding Rs.6,000/- towards transportation, Rs.5,000/- towards extra nourishment and Rs.15,000/- towards pain and suffering is just and reasonable. Thus, in all the appellant/claimant is entitled to receive the total compensation of Rs.68,000/-.

10. In the result, the appeal is partly allowed with proportionate costs while setting aside/modifying the Award and decree dated 29.01.2009 passed in O.P.No.143 of 2005 by the learned Chairman, Motor Accident Claims Tribunal-cum-VII

Additional District Judge (FTC), Nizamabad, at Bodhan, and awarded total compensation of Rs.68,000/- with interest at 7.5% per annum from the date of the claim petition i.e.31.12.2004 till the date of deposit.

11. By virtue of the insurance policy, Ex. B.1 the respondents are joint and severally liable to pay the said compensation and accordingly they shall deposit the compensation amount within 30 days from today, after deducting the amount, if any already paid/deposited.

12. On such deposit, the appellant/claimant is entitled to withdraw the said amount.

13. Advocate fee is fixed at Rs.2,000/-

14. Miscellaneous petitions pending consideration if any in the appeal shall stand closed in consequence.

JUSTICE N. BALAYOGI

DATED 11th APRIL, 2017.
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