

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.2918 OF 2007

JUDGMENT:

1. This Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), is preferred by the appellant-insurer-3rd respondent, aggrieved by the order dated 30.08.2007, passed in O.P. No.242 of 2005, by the Chairman, Motor Accident Claims Tribunal-cum-Principal District Judge, East Godavari at Rajahmundry (for short, 'the Tribunal'); wherein the Tribunal awarded the compensation of Rs.2,53,070/-, against the original claim of Rs.4,00,000/-, with interest at the rate of 6% p.a. from the date of petition till realization, making respondents 2 and 3, owner and insurer of lorry bearing registration No.AP-29T-3554 (for short, 'the lorry'), jointly and severally liable to pay the compensation.

2. Appellant herein is the 3rd respondent – insurer, 2nd respondent herein is the 1st respondent - driver, 3rd respondent herein is the 2nd respondent - owner of the lorry, and 1st respondent herein is the claim petitioner who filed the petition before the Tribunal, under Section 166 of the Act, claiming compensation of Rs.4,00,000/- on account of the injuries sustained by him, in a motor vehicle accident occurred on 28.10.2004.

3. The parties hereinafter are referred to as arrayed before the Tribunal.

4. The case of the petitioner, as narrated in the petition, in brief, is that on 28.10.2004, during morning, when the petitioner as pillion rider was proceeding on the Hero Honda motorcycle bearing registration No.AP-09-AD-9849, being driven by one Mallipudi Venkata Gangarao, to attend bank work at Kakinada and, on the way at Samalkota, the accident lorry came in their opposite direction, being driven by its driver in a rash and

negligent manner, and dashed against their motorcycle; as a result of which, the petitioner and another fell down and sustained severe injuries, the petitioner took treatment in Government General Hospital, Kakinada and, subsequently, took treatment in other private Hospitals at Rajahmundry and Kakinada. A case in Crime No.193 of 2004 for the offence under Section 337 I.P.C. was registered by Samalkota P.S. against the concerned. The petitioner, who was aged 38 years, working as Salesman in Priti Oil Agencies, Samalkota and stated to be earning Rs.4,000/- p.m., lost his job, became handicapped and his family suffered mental agony and pain. Hence, filed the petition seeking compensation of Rs.4,00,000/- against the respondents 1 to 3.

5. Respondents 1 and 2, driver and owner of the lorry, remained *ex parte* before the Tribunal.

6. Respondent No.3, insurer of the lorry, filed counter denying the material allegations of the petition *inter-alia* contending that there is no rashness and negligence on the part of the lorry driver; the lorry was not insured with it and the driver of the lorry was not having valid driving license to drive the lorry and as such the 3rd respondent is not liable to pay compensation to the petitioner. Further, it was contended that the accident occurred due to rash and negligent driving of the driver of motorcycle and, hence, its owner and insurer are necessary parties to the petitioner. He further contended that the compensation claimed is excessive and exorbitant and prayed for dismissal of the petition.

7. The Tribunal, after framing issues and, considering the evidence of P.Ws.1 to 4 and the documents Exs.A-1 to A-265, Exs.X-1 to X-4 and Ex.B-1, granted compensation of Rs.2,53,070/- with interest at the rate of 6% per annum from the date of petition till realisation, holding that the

respondents 2 and 3, owner and insurer of lorry, are jointly and severally liable to pay the awarded compensation. Aggrieved by the impugned order, 3rd respondent - insurer, preferred the present appeal.

8. Heard the arguments of learned standing counsel for the appellant - insurer and the learned counsel appearing on behalf of 1st respondent - claim petitioner and perused the material available on record. There is no representation on behalf of the respondents 2 and 3 herein.

9. Learned standing counsel appearing on behalf of the appellant-insurer submitted that the findings of the Tribunal are contrary to law and facts. Learned counsel for the appellant submitted that the compensation awarded by the Tribunal of Rs.1,50,000/- towards 50% functional disability, alleged to have been sustained by the respondent-claim petitioner is excessive; there is no shortening of right leg of the petitioner up to three inches; the Tribunal has erroneously fixed that the disability suffered by the claim petitioner as 50%, it is not based on record. Even as per the evidence of doctors, P.Ws.2 and 3, the petitioner might have suffered 25% or 15% to 25% of the functional disability but the Tribunal erroneously fixed the disability as 50% and awarded compensation of Rs.1,50,000/- and there is no much dispute with regard to award of compensation on other scores by the learned counsel for the appellant-insurer.

10. *Per contra*, learned counsel appearing on behalf of the respondent-claim petitioner contended that the petitioner has altogether suffered six injuries, he was bedridden for more than six months; there is evidence of P.Ws.2 and 3 doctors that the petitioner suffered functional disability of 25% or 15% to 25%; the petitioner was working as Salesman in Priti Oil Agencies and earning Rs.4,000/- p.m. Due to the injuries suffered by the

petitioner, he is unable to attend his job. Considering all these facts and circumstances, the Tribunal had granted a compensation of Rs.2,53,070/- on all scores, which is quite reasonable and further contended that though the petitioner suffered immense loss, award of compensation of Rs.1,50,000/- towards 50% functional disability is quite reasonable and there are no mitigating circumstances to reduce the award of compensation or to substitute another opinion and, ultimately, prayed to dismiss the Appeal.

11. In view of the rival contentions raised on behalf of both the counsel, the following points have come up for determination:

- 1) Whether there is any illegality in the impugned order of the Tribunal? If so, the impugned order is liable to be set-aside or there can be reduction of compensation awarded by the Tribunal?
- 2) To what result?

12. **POINT Nos.1 AND 2:** Both the points go together. Admittedly, respondent-claim petitioner, to substantiate his claim, marked Exs.A-1 to A-265 and Exs.X-1 to X-4, copy of insurance policy as Ex.B-1, himself was examined as P.W.1 and also got examined the doctors as P.Ws.2 and 3. There is clear evidence of P.W.1 and the documents referred above indicating rashness and negligence on the part of the driver of lorry. There is no much contest on behalf of the appellant-insurer with regard to suffering injuries by the petitioner due to rash and negligent driving of the driver of lorry. There is nothing to disturb the finding recorded by the Tribunal with regard to tagging the rashness and negligence in causing the accident by the driver of lorry and the same is, accordingly, confirmed.

13. As per the evidence of P.W.1 – petitioner and the doctors who were examined as P.Ws.2 and 3, the petitioner suffered the following injuries:

- 1) Crush injury on his right leg middle 1/3rd red in colour;
- 2) Lacerated injury of 5 x 3 C.M. on his back;
- 3) Deformity of his right wrist;
- 4) Swelling and tenderness of his right thigh;
- 5) Fracture of his right femur;
- 6) Compound fracture of both the bones of his right leg;
- 7) Fracture of his radius, and
- 8) Fracture of his third metacarpal bone.

14. Further, there is also evidence to believe that on 06.07.2004 external fixation was applied to the right leg fracture; on 17.11.2004, surgery in respect of radius fracture was done; on 04.12.2004, interlocking nailing was done for the fracture of right femur; on 22.12.2004, skin grafting was done and the petitioner was discharged from the hospital on 31.12.2004 with an advise to take six weeks rest to take further treatment. There is also evidence to show that on 09.05.2005, the petitioner was re-admitted in the hospital for removal of external fixation and was discharged from the hospital on 12.05.2005. There is also evidence of the doctors *i.e.*, P.Ws.2 and 3, that the petitioner suffered disability to a tune of 25% or 15% to 25%. While dealing with the percentage of disability suffered by the petitioner, the Tribunal has discarded the evidence of P.Ws.2 and 3 and substituted its opinion *i.e.*, disability suffered by the petitioner is 50% and assessed the compensation under the head of functional disability as Rs.1,50,000/-. Admittedly, in every district, there is a District Medical Board to examine the percentage of disability suffered

by any person. P.Ws.2 and 3, who are General Surgeon and Orthopaedic Surgeon in the Government General Hospital, Kakinada, are the experts in their field of specializations. P.Ws.2 and 3 have treated the petitioner for a considerable period of time and they have no personal interest in the matter, their opinion/evidence ought to have been considered by the Tribunal in opining the disability as 25% or 15% to 25% and the Tribunal ought not to have concluded the functional disability suffered by the petitioner as 50%. However, the Tribunal had granted the compensation stated hereunder on different scores:

15. For four grievous injuries, the Tribunal granted Rs.40,000/- at the rate of Rs.10,000/- for each grievous injury, for two simple injuries, the Tribunal granted Rs.4,000/- at the rate of Rs.2,000/- for each simple injury, Rs.15,000/- towards the money spent for extra nourishment and transportation to hospital, Rs.9,000/- towards loss of earnings for six months at the rate of Rs.1,500/- p.m., Rs.35,070/- towards medical expenses and Rs.1,50,000/- towards functional disability; in all, the Tribunal had granted a compensation of Rs.2,53,070/-.

16. As seen from the evidence on record, the petitioner has suffered two grievous injuries *i.e.*, fracture of right femur and rib fracture; other injuries are simple in nature. The compensation assessed and awarded on this score is quite reasonable, nothing can be substituted. As far as grant of Rs.1,50,000/- towards the functional disability is concerned, there is clear evidence of P.Ws.2 and 3 doctors that the petitioner has suffered 15% to 25% disability. Admittedly, the petitioner is aged 38 years old on the date of occurrence of accident; he was an earning member. There is also evidence of P.W.3 doctor, about the shortening of right leg of respondent-claim petitioner by three inches, the same cannot be disbelieved. In view of the facts and circumstances, it can safely be

concluded that the petitioner has suffered 50% disability. There is shortening of his leg by three inches. Taking all these factors into consideration, the Tribunal had granted an amount of Rs.1,50,000/- towards functional disability. As seen from the record, the respondent-petitioner was working in an Oil Agency. Definitely, shortening of leg, injuries caused to him in the accident and the number of operations undergone by him had hampered his future prospects of earnings. The accidental injuries have got a lot of impact on his life and health. In these circumstances, the award of Rs.1,50,000/- towards functional disability cannot be reduced or it can be varied and, therefore, the Tribunal has rightly determined the said amount towards loss caused to the respondent-petitioner on the score of his functional disability. Viewed from any other angle, there is nothing to substitute other opinion. In view of the injuries and damages caused to the respondent-claim petitioner, the award of Rs.2,53,070/- is quite reasonable and just, it cannot be contended that it is excessive. All the contentions raised on behalf of the appellant-insurer do fail and as such the Appeal is liable to be dismissed.

17. In the result, the Appeal is dismissed. As a sequel, pending miscellaneous petitions, if any, shall stand dismissed. No order as to costs.

Dr. SHAMEEM AKTHER, J

Date: 07.04.2017.
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