THE HON'BLE SRI JUSTICE G.SHYAM PRASAD

M.A.C.M.A.NO.1665 OF 2010

JUDGMENT

Aggrieved by the order dated 13.4.2010 passed by the court of Motor Accidents Claims Tribunal, (I Additional District Judge) at Nizamabad in O.P.No.1644/2002, the claimant/injured filed the present appeal for enhancement.

The case of the claimant is that on 3.9.2002 when he was travelling in the auto bearing No. AP 25U 768, and that when it reached the limits of Mamidipally village at a distance of 6 kms. eastern side from P.S. Makloor on N.H.16, the driver of the auto drove the vehicle in a rash and negligent manner and lost control over it and dashed against a scooter bearing No. AP 25-A-4457, which was coming from opposite direction, as a result, the auto went off the road and turned turtle, and he sustained fracture of right leg, fracture of right shoulder, fracture of skull, dislocation of right knee joint and other multiple grievous head injuries. He incurred a sum of Rs.1,00,000/- towards medical expenses and for extra nourishment. It is averred that at the time of accident, he was aged 35 years and was doing wholesale fruit business and vegetable and other seasonal businesses and was earning an amount of Rs.12,000/- per month. Therefore, he filed petition under section 166(1)(a) of the Motor Vehicles Act, 1988, claiming compensation of Rs.4,00,000/- under different heads.

The 1st respondent – owner of the auto involved in the accident, remained ex parte.

The 2nd respondent – Insurance Company disputed the averments made in the claim petition and contended that it is not liable to pay compensation.

The Tribunal, after framing appropriate issues and considering the evidence, both oral and documentary available on record, held that the driver of the auto is negligent in driving the auto and it result in the accident. The Tribunal found that the claimant suffered two grievous injuries and one simple injury. Therefore, awarded an amount of Rs.5,000/- each for grievous injuries and Rs.1,000/- for simple injury. The Tribunal fixing an amount of Rs.3,000/- per month as income of the claimant, awarded Rs.6,000/- towards loss of temporary earnings. The Tribunal also awarded an amount of Rs.5,000/- towards medical expenses and Rs.10,000/- towards pain and suffering and thus in all awarded an amount of Rs.32,000/- with interest at the rate of 7.5 per cent annum from the date of the petition till the date of deposit and made both the insured and the insurer jointly and severally liable. Not being satisfied with the same, the claimant/injured filed the present appeal.

The learned counsel appearing for the claimant submits that the compensation awarded by the Tribunal is inadequate and sought for enhancement under different heads. He submits that as per the evidence of P.W.2, doctor, who treated the claimant, the claimant suffered two grievous injuries and one simple injury. But the Tribunal awarded meagre amount of Rs.5,000/- each for grievous injuries and Rs.1,000/- for simple injury. He sought for enhancement of the amount under this head. He further submitted that the claimant is doing business in wholesale fruits and other vegetables and also seasonable fruits and was earning an amount of Rs.12,000/- per month. But the

Tribunal taking the income of Rs.3,000/- per month, awarded Rs.6,000/- for two months for loss of earnings. He stated that the clamant incurred an amount of Rs.1,00,000/- towards medical expenses, but the Tribunal awarded only Rs.5,000/-. He further stated that the Tribunal has not awarded any amount under the heads of attendant and transport charges and for future treatment. Therefore, with these averments, he sought for enhancement of compensation awarded by the Tribunal.

Though in this appeal notice is served on the 1st respondent – owner of the auto, none appeared on his behalf.

The learned Standing Counsel for the respondent No.2 - Insurance Company submits that considering the evidence of P.W.2, who treated the claimant and the nature of injuries sustained by him and as he failed to adduced any evidence with regard to his earnings and the medical expenses incurred by him, the Tribunal based on material on record, granted appropriate compensation and the same does not warrant any interference and that the appeal may be dismissed.

In view of the above rival contentions and the facts on record, the issue that arises for my consideration is whether the claimant is entitled for enhancement of compensation?

There is no dispute with regard to the finding of the Tribunal that the accident occurred due to rash and negligent driving of the driver of the auto in which the claimant was travelling and that he sustained injuries. The 2nd respondent is the insurer of the crime vehicle.

As per the evidence of the doctor, P.W.2, who treated the claimant and issued Ex.A-3 wound certificate, he suffered fracture of Tibia and fracture of clavicle and one simple injury. Though there is no permanent disability, because of the accident, the petitioner lost his earnings for a period of about two months and was confined to home. Therefore, in these circumstances, in my considered view, awarding an amount of Rs.5,000/- each for grievous injury and Rs.1,000/- for simple injury, are on lower side and requires enhancement. Considering the nature of injuries sustained by the claimant and having regard to the facts and circumstances, I am inclined to enhance the amount granted for grievous injuries to Rs.25,000/- each and Rs.5,000/- to the simple injury.

With regard to earnings, except the oral testimony of the claimant that he is doing business in wholesale fruits and seasonal fruits and earning an amount of Rs.12,000/-, there is no evidence on record. Therefore, the Tribunal, in my considered view, rightly fixing the income of the claimant at Rs.3,000/- per month, granted an amount of Rs.6,000/- for loss of temporary earnings and the same warrants no interference.

Coming to medical expenses, the claimant claimed Rs.1,00,000/- and the Tribunal awarded only an amount of Rs.5,000/-, which in my view, based on nature of injuries, require enhancement. Accordingly, the claimant is awarded an amount of Rs.15,000/- towards medical expenses. For pain and suffering, the claimant deserves enhancement. Accordingly, the amount granted by the Tribunal under the head of pain and suffering, is enhanced from Rs.10,000/- to Rs.20,000/-.

Further, the Tribunal has not granted an any amount towards attendant and transport charges and for future treatment. Considering the facts and circumstances, under these heads, the claimant is awarded an amount of Rs.15,000/-.

For the foregoing reasons, the claimant is granted the following amounts:

Sr.No.	Head	Amount awarded by the Tribunal	Amount granted by this court.	Total
1.	For two grievous injuries	Rs.5,000/- each.	Rs.25,000/- each	Rs.50,000/-
2.	For one simple injury	Rs.1,000/-	Rs.5,000/-	Rs.5,000/-
3.	Loss of earnings for two months	Rs.6,000/- (At the rate of Rs.3,000/- p.m.)	Confirmed.	Rs.6,000/-
4.	Medical expenses	Rs.5,000/-	Rs.15,000/-	Rs.15,000/-
5.	Pain and suffering	Rs.10,000/-	Rs.20,000/-	Rs.20,000/-
6.	Transport and attendant charges and for future treatment	No amount awarded.	Rs.15,000/-	Rs.15,000/-
				Rs.1,11,000/-

Accordingly, the compensation awarded by the Tribunal is enhanced to Rs.1,11,000/- (Rupees one lakh, eleven thousand only) under all the above mentioned heads and the claimant is entitled to the said amount with interest at the rate of 7.5 per annum from the date of the petition, till the date of realization.

The respondents are directed to deposit the said amount within a period of two months from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the same.

In the result, the appeal is allowed in part to the extent indicated above. No costs.

Miscellaneous petitions pending if any, shall stand closed.

G.SHYAM PRASAD,J

DATE:13—02—2017

AVS