

THE HON'BLE SRI JUSTICE G.SHYAM PRASAD

M.A.C.M.A No.827 of 2010

JUDGMENT:

This Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), is arising out of the Judgment and decree, dated 05.03.2010, in O.P.No.1081 of 2007 passed by Judge, Family Court-cum-Additional District and Sessions Judge, Nalgonda.

2. The appellant is the petitioner, who filed a petition under Section 166 of the Act claiming compensation of Rs.1,50,000/- on account of injuries sustained by him in a motor vehicle accident occurred on 22.07.2006. The Tribunal, on consideration of evidence, awarded compensation of Rs.22,000/-. The appellant being aggrieved by quantum of compensation preferred this appeal.

3. The brief facts of the case are that on 22.07.2006 at about 7:30 PM while the petitioner and some others were travelling in an Auto rickshaw bearing No. AP-24-W-1935 from Mallepally in order to go to Kondandapuram village, and on the way when they reached near Kodandapuram water plant, the driver of the said auto drove the same in a rash and negligent manner, at high speed, due to which the auto turned turtle and the petitioner sustained grievous injuries and some of the inmates in the said auto also sustained injuries. Basing on the complaint, police registered a case in Crime No.71 of 2006 for the offence punishable under Section 337 IPC against the driver of the auto. The petitioner claimed compensation of Rs.1,50,000/- on account of injuries sustained by him in the accident.

4. The 1st respondent is owner of the crime vehicle, who remained *ex parte* before the Tribunal. The 2nd respondent/insurance company

filed counter denying the liability and that the compensation claimed by the petitioner is excessive.

5. Learned counsel for the appellant submits that the Tribunal has awarded very meagre amount of compensation to the appellant though he sustained two grievous injuries, underwent surgery and incurred huge amount; that the appellant has also suffered 10% disability, but Tribunal has not considered the same and therefore, sought for enhancement of compensation.

6. Learned counsel appearing for the 2nd respondent submits that there is no evidence to the effect that the appellant underwent surgery and incurred medical expenses of Rs.50,000/-. He further submits that as the appellant has not produced proof for loss of earnings, he is not entitled for enhancement of compensation.

7. Heard Sri M.Madhava Reddy, learned counsel for the appellant and Sri N.Chandrasekhar, learned counsel for the 2nd respondent.

8. The point for consideration is whether the appellant is entitled for enhancement of compensation.

9. It is fairly conceded that the Tribunal has not awarded the compensation towards medical bills. On consideration of arguments of both sides, it is obvious that the appellant has received grievous and simple injuries in the said accident and he underwent surgery. But, there is no material on record to prove the said fact, except the case records. However, there is evidence to the effect that the appellant has suffered 10% disability due to the injuries received by him in the said accident. The petitioner was aged about 21 years by the date of the accident and he was said to be unmarried. He claims that he was

working as Security Guard. But, there is no proof of income of the appellant.

10. It is obvious that the Tribunal has not taken 10% disability and in this regard, the Tribunal observed in issue No.2, which reads as follows:

“The petitioner claims a compensation of Rs.1,50,000/-. The petitioner himself is examined as PW-1 he stated that in the accident he sustained multiple fractures i.e. right thigh, femur, colles, apart from other injuries. Ex.A-4 is the C.C. of wound certificate shows that the petitioner sustained 1) Deformity tenderness and abnormal movement of right thigh and x-ray shows fracture of upper third of right femur which is grievous in nature. 2) Colles fracture right which is also grievous in nature and 3) Abrasion 4 x 4 cm which is simple in nature. Ex.A-5 is the disability certificate issued by District Medical Board, Nalgonda showing disability of 10%. Ex.A-6 are medical bills to a tune of Rs.2,120/- and x-ray film. But the petitioner failed to examine the Medical Officer who issued the disability certificate Ex.A-5 and to approve, Ex.A.-6 medical bills. Therefore taking into consideration of the nature of injuries sustained by PW-1 and the type of treatment he has taken in the hospital coupled with the evidence of PW-1, I am of the view that it would be just and proper to award a sum of Rs.10,000/- each for two grievous injuries and Rs.2,000/- for one grievous injuries. Thus in all the petitioner is entitled for a sum of Rs.22,000/-. The Respondent No.1 is the owner of the auto bearing No.AP-24-W-1935, respondent No.2 is the insurer. Ex.B-1 is the copy of insurance policy in respect of the crime vehicle and it is in force as on the date of accident. It is, therefore, the respondent 1 and 2 are jointly and severally liable to pay compensation awarded in this case. For the foregoing reasons, I hold on issue No.2 that the petitioner is entitled for a sum of Rs.22,000/- from the respondent No.1 and 2.”

11. The finding of the Tribunal with regard to Ex.A.5-disability certificate is that the appellant has not proved disability by examining the medical officer, who issued the disability certificate. Therefore, the Tribunal disbelieved the disability certificate-Ex.A.5. Unfortunately, the appellant could not examine the medical officer, who issued disability certificate-Ex.A.5, as admittedly issued by the District Medical Board. This fact was not disputed by the respondents. If the Medical Officer is examined, the respondent would have got opportunity to cross-examine him with regard to disability suffered by the appellant. Even, if we ignore the disability, the amount awarded by the Tribunal is very meagre for the nature of injuries sustained by the appellant.

12. The appellant sustained the following injuries:

- 1) Deformity tenderness and abnormal movement of right thigh and x-ray shows fracture of upper third of right femur which is grievous in nature.
- 2) Colles fracture right which is also grievous in nature and 3) Abrasion 4 x 4 cm which is simple in nature. Ex.A-5 is the disability certificate issued by District Medical Board, Nalgonda howing disability of 10%.

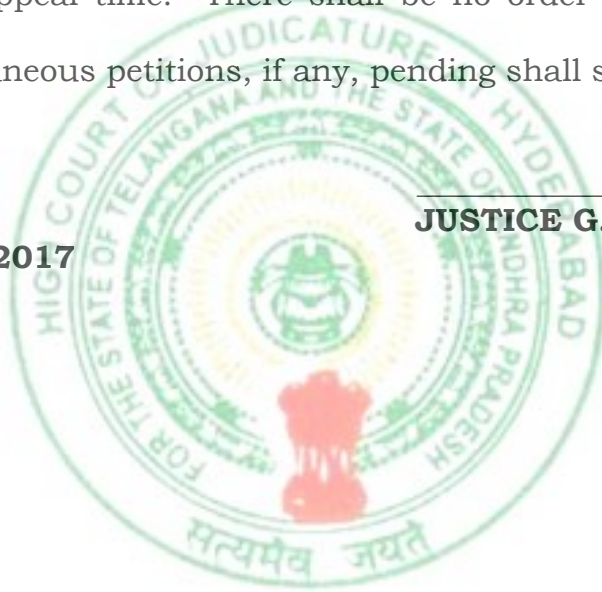
13. On consideration of evidence on record, it is obvious that the appellant has suffered two grievous injuries and one simle injury The Tribunal has awarded an amount of Rs.10,000/- for each grievous injury, the same can be enhanced to Rs.20,000 each, which comes to Rs.40,000/- and an amount of Rs.2,000/- was awarded to one simple injury which can be enhanced to Rs.5,000/-. The Tribunal ignored to grant any amount towards medical bills. The appellant is entitled to an amount of Rs.2,120/- towards medical bills. The Tribunal has not

awarded any attendant charges, transportation charges, loss of earnings. An amount of Rs.15,000/- is awarded under all these heads.

14. Accordingly, the Appeal is partly allowed enhancing the compensation from Rs.22,000/- to Rs.62,120/- with proportionate costs and interest @ 7.5% per annum from the date of petition till the date of realization. The respondents are directed to deposit the amount within two months from the date of receipt of a copy of this order. On such deposit, the appellant is permitted to withdraw half of the deposited amount, and the remaining amount can be withdrawn after expiry of the appeal time. There shall be no order as to costs. As a sequel, miscellaneous petitions, if any, pending shall stand closed.

JANUARY 17, 2017
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JUSTICE G.SHYAM PRASAD



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Date:17.01.2017

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