HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.363 of 2006

JUDGMENT :

This Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for brevity "the Act"), is filed by the appellant – petitioner, aggrieved by the judgment and decree dated 24.10.2005, in M.V.O.P.No.1296 of 2001 passed by the Chairman, Motor Accidents Claims Tribunal-cum-VII Additional District Judge, Guntur District (for brevity "the Tribunal"), whereby and whereunder a sum of Rs.46,021-60 ps. was awarded towards compensation, as against the claim of Rs.2,50,000/-, for the injuries sustained by him in a road accident that occurred on 20.02.2001 at about 9.30 a.m., seeking to grant the entire amount of compensation.

2. The appellant herein is claim petitioner, respondent No.1 – driver-cum-owner of the offending vehicle i.e., Hero Honda bearing No.AP 7H/9072 is respondent No.1, and respondent No.2 - National Insurance Company Limited is respondent No.2 in M.V.O.P.No.1296 of 2001. For the sake of convenience, the parties are referred to as they were arrayed in M.V.O.P.No.1296 of 2001 before the Tribunal.

3. Heard Sri Raja Reddy Koneti, learned counsel for the appellant – petitioner, and Smt. Jonna Ramani, learned Standing Counsel for respondent No.2 – Insurer. Respondent

No.1 – owner of the offending vehicle is dismissed for default vide Court order dated 14.07.2016.

4. Perused the judgment under challenge and evidence on record, both oral and documentary.

5. Learned counsel for the petitioner contended that the petitioner suffered compound fracture in his right tibia and he was hospitalized for more than two months and spent huge money towards treatment. There is also specific evidence on record to believe that the petitioner suffered 10% permanent disability. Though the petitioner was 50 years old and earning Rs.10,000/- per month by doing liquor business, the Tribunal has granted an amount of Rs.46,021-60 ps. only, as against the claim of Rs.2,50,000/-. The said amount of compensation awarded by the Tribunal is very meager and hence the petitioner sought to enhance the same to Rs.2,50,000/-.

6. On the other hand, the learned Standing Counsel for respondent No.2 – Insurer contended that the Tribunal had taken into consideration the nature of injuries, treatment and the medical expenses incurred by the petitioner and ultimately granted a just compensation of Rs.46,021-60 ps. He would further contend that the petitioner has not suffered permanent disability as contended by the learned counsel for the petitioner and hence the amount awarded by the Tribunal

is just and reasonable and there is nothing to interfere in the order and ultimately prayed to dismiss the appeal.

7. In view of the contentions putforth by the learned counsel for the respective parties, the point for determination is, whether the appellant-petitioner is entitled for enhancement of compensation, as prayed for?

8. There is no dispute with regard to the manner in which the accident had occurred as well as the injuries sustained by the petitioner. As far as rash and negligence on the part of the driver of the offending vehicle i.e., Hero Honda bearing No.AP 7H/9072 is concerned, there is specific oral evidence of P.W.1, besides the documentary evidence adduced on behalf of the petitioner under Exs.A.1 to A.4, which are copy of FIR, copy of Charge Sheet, copy of Wound Certificate and copy of judgment in C.C.No.191 of 2001, respectively, Exs.A.5 and A.6, which are copy of Wound Certificate issued by Dr. Maganti Prasad and Discharge Summary issued by Dr. M.J. Naidu Hospital, Vijayawada, respectively, clearly establish the rashness and negligence on the part of the driver of the offending vehicle. The Tribunal has recorded the findings with regard to rashness and negligence on the part of the said driver after analyzing the entire oral and documentary evidence and there is nothing to take a different view and hence the same is to be confirmed.

9. As seen from the record, the petitioner had suffered compound fracture in his right tibia. Taking the totality of the circumstances, the Tribunal has awarded a compensation of Rs.46,021-60 ps. on different scores. There is evidence of P.W.1 that he has suffered fractures in his right leg and Ex.A.5 is the Wound Certificate, which reveals that the petitioner had suffered compound fracture of bones to his right leg lower 1/3, which is a grievous injury. P.W.2 – Doctor, who was examined on behalf of the petitioner, also deposed about the same and there is nothing to doubt his evidence. There is also specific evidence of P.W.2 that the petitioner can walk, but feels pain while walking. He also admitted that there is no mal union of tibia and the petitioner suffered 10% disability. There is also evidence of P.W.2 that the petitioner can attend his normal works and duties with some pain. As per the record, P.W.1 was doing liquor business and said to be earning Rs.10,000/- per month. Though P.W.1 stated that he was doing cultivation, no documentary evidence is produced before the Court to prove the same. The petitioner has also not filed any Income Certificate to believe that he was earning Rs.10,000/- per month. Had it been true, he would have filed his income returns. The Tribunal has believed that the petitioner had suffered 10% disability and by taking the annual net income of the deceased at Rs.10,000/-, assessed 10% damages caused to the petitioner by deducting 1/3rd towards personal

expenses. But, as per the record, there is nothing to believe that the petitioner was earning Rs.10,000/- per month and the deduction of 1/3rd is also erroneous. The Tribunal has granted only Rs.5,000/- towards pain and suffering and medical expenses of Rs.30,021-60 ps. by placing reliance on Exs.A.7 to A.35 – Medical Bills. As far as awarding of medical expenses of Rs.30,021-60 ps. by the Tribunal, the same is tenable and accordingly it is retained. As far as granting compensation of Rs.5,000/- towards pain and suffering is concerned, the same is very low and hence it is enhanced to Rs.30,000/-. The amount of Rs.10,000/- awarded by the Tribunal towards extra nourishment is tenable and hence the same can also be retained.

10. Now, there is a contention that the petitioner had suffered 10% permanent disability, Medical Board is the appropriate authority to substantiate the same. As per the evidence of P.W.2 – Dr. M.V. Naidu, Orthopedic Surgeon, Vijayawada, there is 1 inch shortening of the right lower limb of the petitioner and he is sensing pain. Therefore, on this count, it is appropriate to award an amount of Rs.10,000/- towards permanent disability and accordingly it is awarded. There is also record to show that the petitioner was hospitalized for more than two months and incurred transport expenses, however, no amount is awarded by the Tribunal on this head. Therefore, an amount of Rs.10,000/- can be granted on this score and accordingly it is awarded.

There is also record to show that the petitioner was a earning member. But it is unsafe to take his monthly income as Rs.10,000/-, but his income can be taken as Rs.3,000/- per month and he is entitled for an amount of Rs.18,000/- towards loss of earnings caused to him for six months, and accordingly the same is granted.

11. Thus, the petitioner is entitled to a total compensation of Rs.1,08,021-60 ps. (Rs.30,000/- towards pain and suffering + Rs.30,021-60/- (rounded off to Rs.30,000/-) towards medical expenses + Rs.10,000/- towards extra nourishment + Rs.10,000/- towards transport charges + Rs.18,000/- towards loss of earnings + Rs.10,000/- towards permanent disability, which comes to Rs.1,08,000/-.

12. Accordingly, this Civil Miscellaneous Appeal is allowed in part, enhancing the amount of compensation from Rs.46,021-60 ps. to Rs.1,08,000/- (Rupees one lakh eight thousand only), while maintaining interest @ 7.5% per annum on the enhanced amount also. The petitioner is permitted to withdraw the entire amount of compensation awarded. There shall be no order as to costs.

13. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

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Dr. JUSTICE SHAMEEM AKTHER

07.04.2017.
Msr

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HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
सत्यमेव जयते

07.04.2017
Msr