

HON'BLE MS JUSTICE J.UMA DEVI

M.A.C.M.A.No.27 of 2005

JUDGMENT:

1. This appeal is filed by the claimant being not satisfied with the compensation amount awarded by the Motor Vehicle Accidents Claims Tribunal-cum-District Judge, Vizianagaram, in M.V.O.P.No.780 of 1998 dated 29.11.2004.

2. On 07.10.1998 at about 7.30 P.M. while the appellant-claimant was going on his cycle from Chinaraopalli quarry to his village, a lorry bearing No. A.P. 31 T 3195, driven by 1st respondent, belonging to 2nd respondent, and insured with the 3rd respondent, came in his opposite direction with high speed in a rash and negligent manner and dashed against the appellant-claimant, as a result of which, he sustained grievous injuries and was taken to K.G.H., Visakhapatnam, for treatment and incurred huge expenditure for his treatment. Therefore, he laid a claim before the Tribunal seeking compensation of Rs.1,50,000/-.

3. The 3rd respondent-Insurance Company resisted the claim by filing counter, *inter alia*, contending that the Insurance Policy was not subsisting as on the date of accident and hence the Insurance Company is not liable to pay compensation to the claimant. It is further contended that the compensation claimed by the claimant is highly excessive and exorbitant.

4. During enquiry, on behalf of the claimant, P.Ws.1 and 2 were examined and Exs.A1 to A3 were marked. On behalf of the Insurance Company, Ex.B1 was marked. P.W.1 is the claimant. P.W.2 is the doctor who examined P.W.1 for the injuries sustained by him. Ex.A1 is the copy of the F.I.R, Ex.A2 is the copy of the medical certificate of the claimant and Ex.A3 is the copy of the charge sheet. Eventually, at the culmination of enquiry, basing on the evidence of P.W.1 and Exs.A1 and A3, the Claims Tribunal held that the accident occurred due to rash and negligent driving of the lorry by its driver and then on the quantum of compensation, the Tribunal awarded compensation of Rs.30,000/- under various heads. Not satisfied with the said quantum of compensation, the appellant-claimant filed this appeal for enhancement of the same.

5. Learned Counsel for the appellant-claimant submits that the appellant-claimant was doing labour work on lorries and was earning Rs.80/- per day and that on account of the disability, he is not in a position to undertake hard and strenuous works. He further submits that the Tribunal has not properly appreciated the evidence of P.W.2-doctor, as to the disability sustained and the treatment taken by the claimant and if all these aspects are taken into consideration, the claimant ought to have been awarded higher compensation.

6. On the other hand, learned Counsel for the respondents submits that the Tribunal awarded just and reasonable compensation, which does not warrant interference from this Court.

7. I have considered the respective contentions of the parties and perused the impugned award passed by the Claims Tribunal and material on record.

8. There is no much dispute with regard to occurrence of accident and the insurance of crime vehicle with the 3rd respondent. Therefore, the findings given by the Tribunal, basing on the evidence of P.W.1 and Ex.A1, copy of FIR, and Ex.A3 copy of charge sheet, and also Ex.B1, copy of insurance policy, can be upheld and accordingly they are confirmed.

9. In regard to the quantum of compensation, the Tribunal considered the evidence of P.W.2, the doctor, who examined P.W.1 and issued Ex.A2, the medical certificate. P.W.2 stated in his evidence that P.W.1 has sustained a fracture to his left collar bone, due to which, there is weakness in his left upper limb and accordingly assessed the disability at 25%. Considering the medical evidence in respect of the nature of injury and extent of disability, the Tribunal has awarded a sum of Rs.20,000/- towards loss of earnings and partial and permanent disability; Rs.5,000/- towards pain and suffering and also Rs.5,000/- towards expenditure for medicines, transport and extra nourishment, in all Rs.30,000/-. The appellant-claimant sustained grievous injury on his left collar bone and there is disability of 25% as per Ex.A2-medical certificate. The doctor opined that because of the fracture of left collar bone, the appellant/claimant would get weakness of left upper limb. Taking into consideration all these aspects, this Court is of the view that the

compensation amount of Rs.30,000/- awarded by the Tribunal, on all counts, is low and meager and it can be enhanced to Rs.50,000/-. Accordingly, this Court awards a total compensation of Rs.50,000/- (Rupees Fifty Thousand only) with interest @ 7.5% per annum, instead of 9% per annum, from the date of petition till the date of realization, payable by the respondents jointly and severally. The appellant-claimant is permitted to withdraw the entire compensation amount at once.

10. In the result, the appeal is partly allowed with the above modifications. No order as to costs. Miscellaneous applications, if any pending, shall stand closed.

JUSTICE J.UMA DEVI

10-02-2017
Gsn

