

THE HON'BLE SRI GUDISEVA SHYAM PRASAD

M.A.C.M.A.No.644 of 2005

%23.06.2017

Ahmed Khan

...Appellant

VERSUS

\$ Ahmed Khan and another

...Respondents

< GIST:

> HEAD NOTE:

!Counsel for Appellant: Sri P.Radhive Reddy

^ Counsel for Respondent No.2: Sri Visweswar Reddy,
Standing Counsel for National
Insurance Company Limited

? Cases referred



THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A.No.644 of 2005

JUDGMENT:

This appeal is arising out of the decree and judgment, dated 28.09.2004 passed in O.P.No.957 of 1999 by the Chairman, Motor Accident Claims Tribunal-cum-I Additional District Judge, Nizamabad (for short 'the Tribunal').

2. The appellant is the injured-claimant, who had filed a petition under Section 166(1)(a) of Motor Vehicles Act, claiming compensation of Rs.2,00,000/- on account of the injuries sustained and disability suffered by him in a motor vehicle accident.

3. The brief facts of the case are that on 01.07.1999 while the petitioner was travelling in a lorry bearing No.AAT/5481, as a cleaner, from Hyderabad towards Nizamabad and when the lorry reached near Gannaram Village, the driver of the lorry drove the lorry in a rash and negligent manner at high speed and dashed against another lorry bearing No.AP 21 U 6069 which was coming in opposite direction. The petitioner sustained injuries in the said accident, which resulted in fracture to his right leg, thigh, commuted fracture of right patella, injuries on forehead and other parts of the body. He was shifted to Government Hospital, Nizamabad and from then he had taken treatment from private doctors. The police registered a case in crime No.77 of 1999. The petitioner is unable to attend his work and walk due to the permanent disability suffered by him because of the fractures received in the accident. Therefore, the petitioner has filed the petition and demanded a claim of Rs.2,00,000/- for the injuries sustained by him in the accident against respondent No.1-owner and respondent No.2-insurer of the lorry.

4. Respondent No.1 remained *ex parte*. Respondent No.2 filed counter denying the age, avocation and income of the injured and also pleaded that the accident occurred due to the negligence on the part of both the vehicles and the owner and insurer of lorry bearing No.AP21U 6069 are necessary parties to the proceedings.

5. The Tribunal on consideration of the evidence of witnesses PW1-injured and PW2-Dr.L.Ramulu, the medical officer and the documents Exs.A1 to A6 has allowed the petition in part and awarded compensation of Rs.29,500/- with proportionate costs and interest as against the claim of the petitioner Rs.2,00,000/-.

6. Heard learned counsel for the appellant and learned Standing Counsel appearing for National Insurance Company.

7. It is argued on behalf of the petitioner/appellant that the Tribunal has not considered the disability of 50% suffered by the petitioner and awarded an amount of Rs.29,500/- as against the claim of the petitioner of Rs.2,00,000/-. The petitioner is a cleaner by profession and he is unable to attend to his duties as a cleaner due to the injuries suffered by him in the accident and the compensation awarded by the Tribunal is inadequate and therefore, requested for enhancement of the same.

8. It is argued on behalf of the Insurance Company that the petitioner had taken treatment in a Government Hospital and he has not produced any medical bills to prove the expenditure incurred by him towards medical expenditure and therefore, the compensation awarded by the Tribunal is adequate and it does not require any interference.

9. On consideration of the material available on record, it is obvious that the petitioner is a cleaner by profession and he has suffered with a grievous injury, which is a commuted fracture of right patella. P.W.2-Dr.L.Ramulu deposed to that effect that the petitioner attains the disability at 50% and issued Ex.A4 disability certificate and also stated

that the petitioner could not attend to hardwork due to the injuries sustained by him in the accident. He admitted in his cross-examination that there is a medical board in the Government Hospital, Nizamabad for issuing disability certificate and he is not a member of the medical board. It is pertinent to note that the Tribunal in para 9 of its judgment had given a clear and categorical finding that there is no radiologist's report supporting the evidence of P.Ws.1 and 2 regarding malunion of fractured bone and in such circumstances, Ex.A5 x-ray film does not help the petitioner in any way to prove his disability. It is also observed that P.W.2 is a stock witness, who appears in many cases and gives evidence in routine manner to help the claimants and therefore, the disability aspect spoken by PWs.1 and 2 was disbelieved by the Tribunal.

10. It is obvious that there is a medical board in Government Hospital, Nizamabad. The petitioner ought to have obtained a disability certificate, if really he had suffered 50% disability. On the other hand, it is pertinent to note that P.W.2 appears to be a stock witness and he gives evidence in routine manner to help the claimants. Therefore, the Tribunal has not taken into consideration the disability of 50% alleged to have been suffered by the appellant.

11. The contention raised by the respondent that the petitioner had taken treatment in Government Hospital may be true as Ex.A2 is the O.P. ticket issued by the Government Hospital and Ex.A6 is the case sheet issued by the Government Hospital, Nizamabad. There is no allegation made against the doctors of the Government Hospital, Andhra Pradesh Vydhya Vidhana Parishad, Nizamabad. The case sheet maintained by it shows that the petitioner has suffered with commuted fracture of patella. The Tribunal taken into consideration the injury as grievous injury and awarded compensation of Rs.15,000/-. No doubt, there is no dispute raised by other side that the petitioner has not received any injury at all.

The case sheet clearly reveals that the petitioner has suffered with commuted fracture of patella. There is no dispute with regard to the fact that the appellant was working as cleaner in a lorry and subsequent to the accident, he suffered hardship to attend his duties.

12. In view of the facts and circumstances of the case, the compensation awarded by the Tribunal does not appears to be adequate as the appellant has suffered with grievous injury of fracture to his patella. The functional disability has not been considered by the Tribunal in this case.

13. On consideration of the facts and circumstances of the case, the compensation awarded by the Tribunal for grievous injuries is enhanced from Rs.15,000/- to Rs.30,000/- and for pain and suffering, it is enhanced from Rs.5,000/- to Rs.10,000/- and the rest of the findings of the Tribunal shall be intact.

14. In the result, the appeal is partly allowed modifying the award passed by the Tribunal by enhancing the compensation from Rs.29,500/- to Rs.49,500/- at the rate of 7.5% per annum on the enhanced amount from the date of petition till the date of realization and the rest of the findings of the Tribunal shall be intact. No costs. Miscellaneous petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J

Date : 23.06.2017
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