

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

C.M.A. No.2685 OF 2004

JUDGMENT:

Not being satisfied with the quantum of compensation of Rs.60,000/- awarded in M.O.P. No.103 of 2001, dated 4.2.2004, on the file of the Motor Accidents Claims Tribunal (District Court), Vizianagaram, (for short, 'the Tribunal') against Rs.1,50,000/-, filed under Section 166 of the Motor Vehicles Act (for short, 'the Act'), the claimant preferred the present appeal under Section 173 of the Act seeking enhancement of compensation.

2. For the sake of convenience, the parties will hereinafter be referred to as arrayed before the Tribunal.

3. The facts in issue are as under:

The claimant/appellant filed an application under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.1,50,000/- (Rupees One lakh and fifty thousand only) as he sustained injuries in a motor accident that took place on 8.7.2000. On the said day, while the claimant was returning to his village from Visakhapatnam in APSRTC Bus bearing No.AP-10-Z-6255 and when the said bus reached near Rollawaka at about 6.30 p.m., a Lorry bearing No.OR-10-6721 came from behind being driven by its driver in a rash and negligent manner at high speed, dashed against the left hand of the claimant, placed on the window grill. As a result of

which, the claimant sustained injuries all over the body. He had taken treatment in Government Hospital, Visakhapatnam. In respect of the above incident, a case in Crime No.32 of 2000 of Bondapalli P.S., was registered under Section 338 of I.P.C. Since the respondents 1 to 3, being driver, owner and insurer of the Lorry, the claimant/appellant filed M.O.P. No.103 of 2001 claiming compensation of Rs.1,50,000/- (Rupees One lakh and fifty thousand only) from them.

4. The respondents 1, 2, and 4 remained *ex parte* before the Tribunal. The 3rd respondent – Insurance Company - filed counter denying the material averments in the petition and also the manner in which the accident took place, injuries received contending that the compensation claimed is excessive, sought to dismiss the petition.

5. The 6th respondent filed counter stating that the accident occurred due to rash and negligent driving of the 1st respondent and also contended that the respondents 4 to 6 are not necessary parties, and the compensation claimed is arbitrary and excessive, and, therefore, to dismiss the petition. The 5th respondent filed a memo adopting the counter of respondent No.6.

6. Basing on the above pleadings, the Tribunal below framed the following issues:

- (1) Whether the accident occurred due to rash and negligent driving of the driver of lorry bearing No.OR-10-6721?

- (2) Whether the accident occurred due to the rash and negligent driving of the driver of APSRTC Bus bearing No.AP-10-Z-6255?
- (3) Whether there is any contributory negligence on the part of the driver of lorry bearing No.OR-10-6721 and driver of APSRTC Bus bearing No.AP-10-Z6255?
- (4) Whether the petitioner is entitled for any compensation?
- (5) Whether the respondents are jointly and severally liable to pay any compensation?
- (6) To what relief?

7. In support of the claim, the claimant himself examined as P.W.1 and got examined the Doctor as P.W.2, apart from marking Exs.A1 to A8 and Exs.X1 and X2. On behalf of the contesting respondents, no oral or documentary evidence is adduced.

8. After considering the oral and documentary evidence available on record before it by looking at the nature of the injuries and seriousness and also viewing Rs.60/- per day as earnings and the age as 45 years as shown in Ex.A1, the Tribunal granted a sum of Rs.40,000/- towards disability, Rs.5,000/- towards pain and suffering and Rs.15,000/- towards medical expenses. Thus, in all, the Tribunal awarded a sum of Rs.60,000/- as compensation with interest at 9% p.a. from the date of petition till realisation and proportionate costs payable by the respondents 1 to 3.

9. Heard Sri Jayanti S.C. Sekhar, the learned counsel for the appellant, and perused the material available on record. There is no

representation on behalf of the contesting respondents. The appeal against respondent No.4 is dismissed for default vide Court Order, dated 8.2.2016.

10. The learned counsel for the appellant mainly submits that the quantum of compensation awarded by the Tribunal is on lower side and hence seeks enhancement of the same.

11. Now, the point that arises for consideration is, whether the compensation of Rs.60,000/- awarded by the Tribunal is reasonable, just and fair; and whether the appellant is entitled to enhancement of compensation.

12. When kept in view, the deformity of the claimant, as spoken to by P.W.2, Medical Officer, who treated P.W.1, for fracture of left humerus, which is grievous in nature, and there was surgical intervention even according to P.W.2, and, unfortunately, fracture was also malunited and the same was found later and though 35% partial disability was shown, but no certificate was issued therefor and only Ex.A2 – Wound Certificate - is marked for which injury a sum of Rs.40,000/- was awarded towards temporary disability. The Tribunal awarded a paltry sum of Rs.40,000/- (Rupees Forty thousand only) for the said injury, which needs to be enhanced. Accordingly, a sum of Rs.50,000/- (Rupees Fifty thousand only) is awarded as against Rs.40,000/- (Rupees Forty thousand only) towards the grievous injury sustained by the claimant. The Tribunal awarded a sum of Rs.5,000/-

(Rupees Five thousand only) towards pain and suffering and kept in view the actual suffering undergone by the petitioner, a sum of Rs.15,000/- (Rupees Fifteen thousand only) is awarded as against Rs.5,000/- (Rupees Five thousand only) towards pain and suffering undergone by the claimant. The tribunal awarded a sum of Rs.15,000/- towards medical expenses, which remains undisturbed and is maintained.

13. It appears that the Tribunal did not award any amount towards extra nourishment, attendant charges. When the claimant sustained grievous injury, certainly, he would have undergone lot of mental trauma during the said period. Hence, a further sum of Rs.10,000/- (Rupees Ten thousand only) is awarded towards extra nourishment. Keeping in view that the claimant sustained grievous injury and undergone surgical intervention and landed into malunion, a sum of Rs.12,000/- (i.e., Rs.2,000/- x 6 months) is awarded towards attendant charges.

14. In the result, the Appeal is partly allowed while enhancing the compensation from Rs.60,000/- (Rupees Sixty thousand only) to Rs1,02,000/- (Rupees One Lakh and two thousand only) against the respondents 1 to 3 with joint and several liability. The rate of interest at 9% p.a. granted by the tribunal on Rs.60,000/- is maintained and the enhanced amount of Rs.42,000/- will carry interest at the rate of 7.5% p.a., from the date of claim petition till the date of realization. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the Civil Miscellaneous Appeal shall stand closed.

A. SHANKAR NARAYANA, J

Dt. 02.08.2017
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