

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL MISCELLANEOUS APPEAL No.2944 of 2004

JUDGMENT:

The present appeal, under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), is filed against the order and decree dated 05.04.2004, passed in O.P.No.886 of 2002 on the file of the IV Additional Chief Judge-cum-Motor Vehicles Accidents Claims Tribunal, City Civil Court, Hyderabad (for short, 'the Tribunal'), on the ground that the award of Rs.89,500/- as against the claim of Rs.2,00,000/- laid under Section 166 read with Section 140 of the Act is very meagre and, hence, sought to grant the balance amount.

2. The present appeal was filed by the petitioner in the O.P. However, during pendency of the appeal, the petitioner died and his legal representative is brought on record as appellant No.2. Respondent Nos.1 and 2 herein, who are owner and the insurer of Eicher Goods Tempo bearing registration No. MH 12 AR 680, respectively, were respondent Nos.1 and 2, respectively, in the O.P.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts, which are not in dispute, are that while the petitioner along with his family was travelling in a tempo bearing No.AFY 3712 from Tuljapur to Hyderabad and when they reached near Hipparga Cross Road on National Highway No.9, Karnataka State, one

Eicher Goods Tempo bearing No. MH 12 AR 680 came in opposite direction in a rash and negligent manner and dashed the vehicle in which the petitioner was travelling, as a result, the petitioner sustained fracture of lateral tibia condyl right, fracture of neck of fibula right and fracture of 5th, 6th and 7th right ribs. The Tribunal, after considering the evidence adduced before it, awarded a total sum of Rs.89,500/- with interest at 9% per annum from the date of petition till realisation.

5. Learned counsel for the appellants submitted that on account of the accident, the petitioner - deceased 1st appellant had suffered permanent disability and, thus, suffered loss of earning capacity, which was not taken into consideration by the Tribunal. He also submitted that under the head pain and suffering, the Tribunal ought to have awarded Rs.50,000/- considering the nature of injuries and further treatment which the deceased 1st appellant would have taken in future had he been alive. It is further submitted that there is no reason for the Tribunal to disbelieve Ex.A9 – bunch of medical bills, and Ex.A12 – bunch of transport bills, submitted by the petitioner.

6. Learned counsel for respondent No.2 supported the order passed by the Tribunal. He submitted that just compensation was awarded and, as a matter of fact, Tribunal was liberal in granting amount in all respects.

7. Perused the order under challenge and the evidence on record. Towards pain and suffering, the Tribunal awarded Rs.10,000/- taking note of the injuries sustained by the petitioner and, therefore, the

same cannot be said to be less. Towards fracture injuries, the Tribunal awarded a sum of Rs.50,000/- and the same is adequate, especially considering the fact that the petitioner was treated in NIMS Hospital at Hyderabad.

8. So far as the medical expenses and transportation are concerned, Ex.A9 – bunch of medical bills for Rs.31,771.05 ps. and Ex.A12 – bunch of transport bills for Rs.4,415/-, the total amount of which is Rs.36,186.05 ps., were submitted, but the Tribunal awarded a sum of Rs.25,000/- only towards hospital expenses, medicines, extra-nourishment, transportation and other incidental charges. This Court is of the opinion that there is no reason to disbelieve Exs.A9 and A12 and, therefore, the appellants are entitled to the amounts under Exs.A9 and A12 and, accordingly, the difference amount i.e., Rs.11,186.05/- (Rs.36,186.05 – Rs.25,000) is granted towards medical expenses and transport.

9. Further, considering the fact that the petitioner was admitted in NIMS Hospital, where he has taken treatment from 01.03.2002 to 12.03.2002, it would be appropriate to grant a reasonable sum of Rs.500/- per day for the said period, which would come to Rs.6,000/-, and, accordingly, the same is granted towards extra-nourishment and other incidental charges.

10. With regard to loss of past earnings, in the absence of any proof showing that the petitioner was drawing monthly salary of Rs.2,000/- per month as claimed by him, the Tribunal has taken monthly

income at Rs.1,500/- per month and considering that the petitioner could not have attended to his work for a period of three months, awarded Rs.4,500/- towards loss of past earnings, which is reasonable.

11. Thus, the appellants are entitled to a total compensation of Rs.1,06,686.05/-(Rs.10,000 + 50,000 + 25,000 + 11,186.05 + 4,500 + 6,000), rounded off to Rs.1,06,700/-, as against Rs.89,500/- granted by the Tribunal, and the same is, accordingly, granted, while maintaining interest at 9% per annum, as ordered by the Tribunal, on the enhanced amount also.

12. Accordingly, the Civil Miscellaneous Appeal is allowed in part modifying the order passed by the Tribunal, by enhancing the compensation, as indicated above, and confirming the same in all other respects. There shall be no order as to costs.

13. As a sequel thereto, miscellaneous applications, if any pending in the present appeal, stand closed.

JUSTICE CHALLA KODANDA RAM

21.12.2017

v v