

HON'BLE SRI JUSTICE M.S.K.JAI SWAL

M.A.C.M.A.No.1087 of 2010

JUDGMENT:

This appeal is filed by the claimant questioning the inadequacy of the compensation awarded by the learned Chairman, Motor Accident Claims Tribunal-cum-I Additional District Judge, Vizianagaram (for short 'the Tribunal') in O.P.No.8/2009, dated 31.03.2010, by and under which the Tribunal awarded a sum of Rs.15,000/- as against the claim of Rs.1,50,000/-

Briefly the case of the appellant is that on 29.08.2008 the claimant was proceeding on his bicycle towards V.T.Agraharam of Vizianagaram, at about 11 a.m. when he reached Indiranagar weighing bridge, an auto bearing registration No.AP35U-1766 came from his behind in a rash and negligent manner and dashed him, due to which, the claimant sustained grievous injury to his right hand. He was aged about 29 years and working in R.K.Textiles of Vizianagaram and getting salary of Rs.3,000/- at the time of accident. The 1st respondent is the driver, respondents Nos.2 & 3 are the owners of the offending vehicle and the 4th respondent is the insurer.

During course of enquiry, the injured himself was examined as PW 1 and also examined the Medical Officer as PW 2 and Exs.A1 to A9 & Ex.X1 were marked. On behalf of the respondents, no oral evidence was adduced, but the insurance policy was marked as Ex.B1.

Upon considering the oral and documentary evidence available on record, the Tribunal awarded total compensation of Rs.15,000/- as against the claim of Rs.1,50,000/- Aggrieved by the said award, the present appeal is filed by the claimant.

The learned counsel for the appellant submits that the amount of Rs.15,000/- granted by the Tribunal for the injuries sustained by the claimant is grossly inadequate and that the Tribunal has not taken into consideration

the relevant facts in determining the compensation, which is required to be just and proper.

On the other hand, the learned counsel for the insurance company submits that on the basis of the evidence available on record, the Tribunal determined the compensation, which cannot be said to be inadequate, warranting any enhancement.

Heard both sides and perused the material on record.

The factum of accident involving the vehicles, the date, time and place, and the fact of crime vehicle being insured with the 4th respondent-insurance company are not in dispute. Similarly, the liability that is fastened on the respondents jointly and severally is also not challenged. The only claim of the appellant is that though he sustained fracture and suffered disability, the Tribunal has not awarded just and reasonable compensation and only awarded a compensation of Rs.15,000/- as against the claim of Rs.1,50,000/-

Upon carefully perusing the oral and documentary evidence on record and also the impugned award, it is noticed that the Tribunal has taken into consideration the evidence of PW 2-the medical officer and awarded a sum of Rs.2,000/- towards shock, pain, suffering and loss of amenities, Rs.5,000/- towards partial disability due to fracture, Rs.5,000/- towards medical expenses and transportation charges and Rs.3,000/- towards loss of income.

PW 2, the medical officer, in his evidence deposed that the claimant was admitted in his hospital with a fracture of right hand and he applied plaster of paris and treated the injured for two days and later discharged. The medical officer produced Ex.X1 case sheet and Ex.A2 wound certificate. As per Ex.A2 wound certificate, the claimant sustained a fracture to the 5th metacarpal bone of right hand.

Therefore, the amount awarded by the Tribunal under different heads other than for shock, pain, suffering and loss of amenities is just and reasonable. However, for the fracture injury of right hand of the claimant, the Tribunal awarded only Rs.2,000/-, which is inadequate. The injured was a person aged about 29 years and the fracture suffered by him to his right hand is grievous injury, and therefore the amount awarded by the Tribunal under the head "shock, pain, suffering and loss of amenities" can be enhanced to Rs.20,000/-. It is also observed that the Tribunal awarded interest @6% p.a. on the compensation amount and it should be @7.5% p.a.

Subject to the above modification, the MACMA is allowed in part. The compensation amount awarded by the Tribunal is enhanced from Rs.15,000/- to Rs.33,000/- together with proportionate costs and interest thereon @7.5% p.a. from the date of petition till the date of realization. The respondents shall deposit the said amount within a period of two months from today. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

M.S.K.JAI SWAL, J

Date: 19th June, 2017
Dsr