

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.NO.910 OF 2007

JUDGMENT

The appellant is the claimant. This appeal is filed against the judgment and decree dated 6.11.2006 passed by the court of II Additional Chief Judge, City Civil Court, Hyderabad in O.P.No.1327 of 2004, seeking enhancement of the compensation.

The averments in the claim petition are that the claimant is aged about 50 years and doing business and earning an amount of Rs.10,000/- per month and is also an income tax assessee. On 12.2.2004, while the petitioner along with two others was going by Matiz car bearing No.AP 11K 3789 from Hyderabad to Jadcherla, being driven by one Suresh Kumar Jain, and that when the car reached Rajapur petrol pump at about 9.00 a.m., the driver of the car lost control and dashed against a tree. As a result, petitioner fell down from the car and sustained injuries. He sustained fracture of left mid third of the clavicle, fracture of posterior 2nd 3rd 4th and 8th ribs, fracture of left neck scapula. The claimant lost consciousness and shifted to Yashoda Hospital, where he was treated as an inpatient till 23.2.2004 and was also operated upon. The Balanagar Police, Mahaboobnagar District, registered the case in Crime No.28 of 2004 against the driver of car. The case of the claimant is that the accident occurred due to rash and negligent driving of

the driver of the jeep and that because of the accident, he sustained multiple fracture and that he is not able to do his business, walk, sit or squat and he is also unable to breathe properly. He is suffering with pain and other discomforts and that he lost his career advancement and comforts. With these averments, the claimant filed claim petition under Section 166 and 163-A of the Motor Vehicles Act, 1988 claiming compensation of Rs.4,00,000/-.

The 1st respondent is the owner of the car involved in the accident and he filed counter affidavit denying and claim petition and stating that due to excessive pressure developed in one of the tyres, it got burst and resulted in driver losing the control and the vehicle dashed against the tree. It is stated that as the vehicle is insured with the 2nd respondent, if any compensation awarded, the same has to be paid by the 2nd respondent – insurer.

The 2nd respondent – insurer also filed counter affidavit and denying the mode and manner of accident, age, earnings of the claimant, sought to dismiss the claim petition.

Considering the respective pleadings, the trial court framed the following issues for consideration:

1. Whether the accident took place on 12.2.2004 at about 9.00 a.m. due to rash and negligent driving of Matiz car bearing No.AP 11K 3789, by its driver?

2. Whether the petitioner is entitled to claim compensation from the respondents? If so, to what amount and from whom?
3. To what relief?

To prove his case, the claimant got examined himself as P.W.1 and examined the doctors who treated him as P.Ws.2 and 3 and to prove his income, examined P.W.4. The claimant got marked Exs.A-1 to A-12. On behalf of the respondents, no evidence, either oral or documentary was adduced. The court marked the copy of the policy available on record, as Ex.C-1.

Appreciating the evidence of the claimant as P.W.1 and the contents of certified copy of FIR marked as Ex.A-1, which disclosed that one Suresh Kumar Jain was also travelling in the said car and the left front tyre of the car got burst, the driver lost control over the car and dashed the tree. As per the version of P.W.1, the police did not file any charge sheet. Considering these circumstances, the trial court held that it cannot be stated that there has been rash and negligent driving of the Matiz car by the driver of the car and therefore, it was a freak accident. The trial court awarded the compensation as under:

i) Shock, pain and suffering, loss of amenities of life	: Rs. 25,000-00
ii) Fractures	: Rs. 60,000-00
iii) Medical expenses	: Rs. 65,851-00
iv) Loss of income	: Rs. 30,000-00
v) Extra nourishment	: Rs. 10,000-00

	Rs.1,90,851-00

Rounding up the above amount, the trial court granted compensation of Rs.1,90,850/- with interest at 7.5 per cent per annum from the date of the petition till the date of realization, payable by the insurance company alone. The trial court also ordered the mode of payment of said amount to the claimant.

Not being satisfied with the compensation awarded by the trial court, the claimant preferred the present appeal.

The learned counsel for the claimant contended that the trial court granted very meager amount to the claimant. Due of the accident, the claimant sustained fracture of left ribs and ruptured spleen. He stated that P.W.2 is the doctor who performed surgery on the claimant and as per his evidence spleen was removed, but no amount was granted. He stated that because of the accident, the claimant is suffering from different ailments and that he sought to enhance the compensation granted by the trial court.

On the other hand, the learned counsel appearing for the insurance company submits that the trial court taking into account all the facts and circumstances, awarded just and reasonable amount and hence the same does not be warrant any interfered, and that the appeal may be dismissed.

In view of the above rival contentions, the issue that arises for my consideration is whether the claimant is entitled for enhancement of compensation as claimed by him?

Heard the learned counsel and perused the record.

In the present case, there is no dispute with regard to occurrence of the accident and the claimant receiving injuries in the said accident. There is also no dispute with regard to subsistence of policy as on the date of the accident and there is also no violation of terms and conditions of the policy marked by the Court under Ex.C-1.

The case of the claimant is that in the accident in question, he sustained fracture of left mid third of the clavicle, fracture of posterior 2nd 4th and 8th ribs and fracture of left neck scapula, tenderness over left clavicle swelling of shoulder and left side of chest and because of the accident, he is having sever pain while breathing and other injuries over the body and he was admitted in Yashoda Hospital from 12.2.2004 to 23.2.2004. P.W.2 is the doctor who treated the claimant at Yoshada Hospital and he corroborated the version of the claimant. As per his evidence the claimant suffered multiple fractures on left ribs and ruptured spleen. A surgery was also performed on P.W.1. He further stated that spleen of the claimant was removed.

The learned counsel for the claimant based on certain literature produced from internet, submitted that spleen is a large vascular lymphatic organ in the upper left part of the abdominal cavity of vertebrates, near the stomach and it has various functions in modifying the structure of blood and was formerly regarded as the seat of certain emotional.

From the material on record, it could be seen that the claimant is aged 50 years and doing business and because of the accident, he sustained injuries, which are severe in nature and as per the evidence of P.W.2, doctor, who treated the claimant at Yoshada Hospital, spleen was removed. As per the medical evidence on record, the claimant has to under regular medical check up and he has to take lot of care to live rest of his life. The trial court has not granted any amount for the removal of spleen and for the consequences arising there from. Having regard to the facts and circumstances, I am inclined to grant an amount of Rs.60,000/- for removal of spleen.

Under other heads as noted above, the Tribunal considering the evidence on record, awarded just and reasonable amounts and the same do not warrant any interference.

In the result, the compensation granted by the trial court is enhanced to Rs.2,50,850/- from Rs.1,90,850/- with interest at the rate of 7.5 per cent

from the date of the petition till date of realization. On deposit, the appellant/ claimant, is permitted to withdraw entire amount. Other directions imposed by the Tribunal remain unchanged.

The appeal is accordingly partly allowed. No costs.

Miscellaneous petitions pending if any, shall stand closed.

DR. SHAMEEM AKTHER,J

DATE:27—06—2017

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