

HON'BLE DR. JUSTICE SHAMEEM AKTHER

MACMA No.1112 OF 2007

JUDGMENT:

This appeal, under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), is filed by the appellant, who is the petitioner in M.V. O.P. No.66 of 2005 on the file of the Chairman, Motor Accidents Claims Tribunal-cum- Additional District Judge, Ranga Reddy District, (for short, 'the Tribunal'), having got dissatisfied with the award of compensation of Rs.87,000/- with interest @ 7.5% per annum from the date of petition till realization granted by the Tribunal, as against the claim of Rs.2,00,000/-.

The appellant is the petitioner and respondents 1 and 2 are the owner and the insurer of the bus respectively. They will hereinafter be referred to as the petitioner and respondents as arrayed before the Tribunal, for the sake of convenience.

The case of the petitioner is that on 18.12.2004 while he was crossing the road at Tyagayya statue leads to Hussain Sagar Road by walk, one bus bearing No.AP-02-U-7575 coming from Hyderabad side in a rash and negligent manner, dashed the petitioner, due to which he sustained injuries. Immediately he was shifted to Apollo Hospital, for treatment and incurred medical expenses.

The first respondent remained *ex parte*.

The second respondent – insurer filed written statement denying the averments made in the claim petition, while contending that the driver of the bus was not holding valid driving licence as on the date of accident and the petitioner must put to

strict proof that the bus was validly insured with their company and hence, prayed to dismiss the claim petition.

Upon perusal of the material on record, the Tribunal awarded an amount of Rs.87,000/- with interest @ 7.5% P.A. from the date of petition till realization against the respondents.

Challenging the assessment of the quantum of compensation, the present appeal is filed.

Heard both sides. Perused the material on record.

Learned counsel for the petitioner contended that the petitioner had suffered six grievous injuries and two simple injuries. The Tribunal did not consider the fractures sustained by the petitioner and failed to grant compensation on this score. The Tribunal granted less compensation on other heads and ultimately prayed to enhance the compensation to an amount of Rs.2,00,000/- as claimed by the appellant.

Notice on the first respondent is not served and the case against the first respondent was dismissed for default by order dated 08.07.2016.

Learned counsel appearing on behalf of the second respondent - insurer contended that the Tribunal has granted an amount of Rs.15,000/- for three grievous injuries and an amount of Rs.2,000/- for two simple injuries, in all an amount of Rs.17,000/- was awarded for the injuries sustained by the petitioner, which is quite reasonable. The Tribunal has also granted compensation on the other scores, such as medical expenses, extra nourishment, transportation and loss of future earnings. There is nothing to interfere with the order in appeal, ultimately prayed to dismiss the same.

Learned counsel appearing for the petitioner vehemently contended that Doctor M.Hari Sharma, who treated the petitioner, was examined as P.W.2 and he categorically deposed that the petitioner suffered fracture of right humerus, fracture of right clavicle, fractures of 2nd - 6th ribs right side and irregular lacerated wounds over the left side of the forehead, but in Ex.A.2 -certified copy of Medico Legal Case record issued by Apollo Emergency Hospital, no such injuries were mentioned. Learned counsel for the petitioner contended that the injuries sustained by the petitioner were mentioned in Ex.C.1 - case sheet, but in Ex.C.1 it was simply mentioned that the appellant sustained fractures to ribs. The other details were not mentioned therein.

There is specific evidence of P.W.2 in respect of the injuries sustained by the petitioner as contended, but the Tribunal did not consider on this score, which requires consideration by this court. Further the Tribunal has granted an amount of Rs.15,000/- for two grievous injuries and Rs.2,000/- for two simple injuries. It appears to be low. In those circumstances, an amount of Rs.35,000/- towards pain and sufferance of the injuries sustained by the petitioner is granted instead of an amount of Rs.17,000/- for the injuries as awarded by the Tribunal. The compensation on other heads is concerned, the Tribunal has granted an amount of Rs.5,000/- towards shock and loss of amenities of life, an amount of Rs.50,000/- towards medical expenses, transportation, and extra nourishment expenses and an amount of Rs.15,000/- towards future loss of income. It appears to be quite reasonable. There is nothing to interfere on this score.

There is specific evidence of P.W.2 that the petitioner has to undergo operation for removal of fixtures in his right humerus which approximately costs of Rs.20,000/-. It appears to be high since the date of accident is 18.12.2004. Hence on this score an amount of Rs.10,000/- is granted.

It is evident from the record that the petitioner suffered grievous injuries due to rash and negligent of the RTC bus and there was valid insurance with the second respondent-insurer. There is no evidence on violation of terms and conditions of the policy - Ex.B.1. In those circumstances, the Tribunal has rightly tagged the liability against respondents 1 and 2/ owner and insurer of the bus with joint and several liability with 7.5% interest. No different finding is required to be substituted on this score.

In the result, the appeal is allowed in part, enhancing the compensation to an amount of Rs.1,15,000/- (Rupees one lakh fifteen thousand only) from Rs.87,000/-, with interest @ 7.5% per annum from the date of filing of M.V.O.P. till the date of realization. The respondents are directed to deposit the entire compensation amount with interest and costs within one month from the date of receipt of a copy of this order. On such deposit, the petitioner is permitted to withdraw the entire amount.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

Dr. SHAMEEM AKTHER, J

Date: 30.06.2017

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