

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No.1605 of 2010

JUDGMENT :

This Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for brevity "the Act"), is preferred by the appellant-petitioner seeking enhancement of compensation, challenging the order and decree dated 02.07.2010 in O.P.No.1167 of 2004 passed by the Motor Accidents Claims Tribunal (II Additional District and Sessions Judge) (FTC), Nizamabad (for brevity "the Tribunal"), awarding compensation of Rs.23,000/- as against the claim of Rs.2,00,000/- laid by him under Section 163 (1)(a) of the Act, r/w. Rule 455 of A.P. Motor Vehicles Rules, 1989 for the injuries sustained by him in a motor accident that occurred on 10.04.2003.

2. Appellant is the petitioner, respondent No.1 is the owner of the offending Auto bearing No.AP-25U-3991 and respondent No.2 is its insurer i.e., National Insurance Company Limited. For the sake of convenience, the parties are referred to as they were arrayed in O.P.No.1167 of 2004 before the Tribunal.

3. The brief facts of the case are that on 10.04.2003 at about 5.30 p.m., while the petitioner was travelling in the offending Auto bearing No.AP-25U-3991 and reached near

Gandhinagar Village, Mallaramgandi, the Auto dashed against the TVS Suzuki Motor Cycle bearing No.AP-25H-5784 on account of the rash and negligent driving by the driver of the offending Auto, as a result of which the petitioner and other inmates of the Auto sustained fracture injuries, apart from the death of rider of the Motor Cycle. Immediately, the petitioner was shifted to Government Hospital, Nizamabad and thereafter he was treated in a private hospital as an inpatient. Basing on the complaint, the Nizamabad Rural Police have registered a case in Crime No.84/2003 for the offences punishable under Sections 304-A and 337 IPC. The petitioner filed the above O.P. claiming compensation of Rs.2,00,000/- against respondent Nos.1 and 2 on account of the injuries sustained by him in the accident.

4. Before the Tribunal, respondent No.1 – owner of the offending Auto was set exparte and respondent No.2 – insurer filed counter denying its liability and also the quantum of compensation. On consideration of the evidence of P.W.1 and documentary evidence under Exs.A.1 to A.4 filed on behalf of the petitioner, and Ex.B.1 – Insurance Policy filed on behalf of the 2nd respondent - insurer, by order and decree dated 02.07.2010, the Tribunal has awarded a compensation of Rs.23,000/- under various heads for the injuries sustained by the petitioner with interest @ 7.5% per annum from the date of the petition till realization against the respondent

Nos.1 and 2 jointly and severally. Having dissatisfied with the amount of compensation awarded by the Tribunal, the appellant-petitioner has preferred the present appeal seeking enhancement of compensation.

5. Heard Sri L. Dayakar Reddy, learned counsel for the appellant-petitioner and none appeared on behalf of the 2nd respondent – insurer. Perused the order under challenge and also the evidence on record.

6. Learned counsel for the appellant-petitioner submits that the Tribunal awarded a meager amount of compensation though the appellant-petitioner has sustained two grievous injuries and two simple injuries in the accident and that the amount of compensation awarded by the Tribunal under various other heads is also low and inadequate and hence sought for enhancement of compensation.

7. Considering the arguments advanced by the learned counsel for the appellant-petitioner and also on perusal of the evidence on record, it is obvious that in the alleged accident, the petitioner has sustained two grievous injuries and two simple injuries. The Tribunal held that the driver of the offending Auto was responsible for the said accident and accordingly awarded a total compensation of Rs.23,000/- fixing the liability against respondent Nos.1 and 2, owner and insurer, respectively, of the offending Auto. It is to be seen

that in the impugned order, the Tribunal clearly held that the evidence of P.W.1 – injured coupled with Ex.A.3 – Certified copy of injury certificate reveals that the petitioner has sustained fracture injuries of left hand wrist and foot metatarsal and two simple injuries to his left heel and back side of his body and that the fracture injuries are grievous in nature. Therefore, there is no dispute with regard to the injuries suffered by the petitioner in the accident and hence the compensation awarded by the Tribunal towards the said injuries does not appear to be in proportion to the injuries suffered by him. Further, instead of awarding compensation separately under two different heads viz., ‘compensation for grievous injuries’ and ‘compensation for pain and suffering and loss of mental prospects’, it would be appropriate to award compensation under one head i.e., ‘grievous injuries’. As on the date of accident, the petitioner was aged 32 years and was a businessman by profession. Therefore, the compensation awarded by the Tribunal at Rs.5,000/- each towards two grievous injuries is enhanced to Rs.25,000/- each, which comes to Rs.50,000/-, including pain and suffering. Further, the compensation awarded by the Tribunal at Rs.1,000/- each towards two simple injuries is enhanced to Rs.5,000/- each, which comes to Rs.10,000/-. Further, as the petitioner has not produced any medical bills towards the expenditure incurred by him for treatment, the Tribunal awarded a sum of Rs.1,000/- only towards medical

expenditure. However, keeping in view the nature of fracture injuries suffered by the petitioner, the compensation towards medical expenditure is enhanced from Rs.1,000/- to Rs.3,000/-. As regards the loss of earnings, the Tribunal has awarded a sum of Rs.5,000/- and the same is enhanced to Rs.6,000/-. The rate of interest awarded by the Tribunal @ 7.5% per annum shall remain unaltered.

8. Thus, the compensation awarded by the Tribunal under various heads is enhanced as mentioned below:

Compensation towards	Amount awarded by the Tribunal Rs.	Amount awarded by this Court Rs.
1. Two grievous injuries, including pain & suffering and loss of mental prospects	15,000.00	50,000.00
2. Two simple injuries	2,000.00	10,000.00
3. Medical expenditure	1,000.00	3,000.00
4. Loss of earnings	5,000.00	6,000.00
TOTAL :	23,000.00	69,000.00

9. In the result, the Civil Miscellaneous Appeal is allowed in part, enhancing the amount of compensation from Rs.23,000/- to Rs.69,000/- (Rupees sixty nine thousand only) with proportionate costs and interest @ 7.5% per annum from the date of petition till the date of realization. The 2nd respondent – insurer is directed to deposit the compensation amount within one month from the date of receipt of a copy of this judgment and recover the same from the 1st respondent -

owner. On such deposit being made, the appellant-petitioner is permitted to withdraw the entire amount of compensation. No order as to costs.

10. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

GUDISEVA SHYAM PRASAD, J

24.11.2017.
Msr



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