

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.416 of 2014

JUDGMENT:

The petitioner/claimant in M.V.O.P. No.214 of 2010, aggrieved by the order dated 2.8.2011, passed by the Chairman, Motor Vehicle Accidents Claims Tribunal-cum-VI Additional District Judge, Guntur (for short, 'the Tribunal'), whereby and whereunder a compensation of Rs.83,114/- was awarded as against the claim of Rs.1,00,000/- laid under Section 163-A of the Motor Vehicles Act, 1988 (for short, 'the Act'), preferred the present Appeal under Section 173 of the Act requesting to fasten liability on the Insurer also.

2. Heard Sri Telaprolu Sricharan, learned counsel for the appellant (claimant) and Sri Naresh Byrapaneni, learned counsel for the respondent No.2. Though notice sent on respondent No.1, refused to receive the same.

3. For the sake of convenience, the parties will hereinafter be referred to as arrayed before the Tribunal.

4. There is no dispute in regard to the manner in which the accident did take place and the grievous injuries sustained by the petitioner-claimant to his knee.

5. The 1st respondent, owner of Auto No.AP-7-TT-8585, remained *ex parte*. The 2nd respondent – Insurance Company resisted the request.

6. Counter is filed by the 2nd respondent requiring the petitioner to prove that the driver of the 1st respondent vehicle possessed valid driving licence on the date of accident. The Tribunal, basing on the above said pleadings, framed the following issues.

“(1) Whether the accident occurred due to rash and negligent driving of the driver of the vehicle i.e., Auto bearing No.AP-7-TT-8585?

(2) Whether the petitioner is entitled to compensation, and if so, to what amount and against whom?

(3) To what relief?”

7. During enquiry, the petitioner, besides examining himself as P.W.1, examined Dr. M. Saidulu as P.W.2, and marked Exs.A1 to A5 and also Exs.X1 and X2. On behalf of the respondents, R.W.1, an official from the legal branch office of the 2nd respondent is examined as R.W.1 and Senior Assistant in RTA office was examined as R.W.2 and marked Exs.B1 to B3 and also Ex.X3..

8. The Tribunal on Issue No.1, held that due to rash and negligent driving of the Auto driver, which auto belongs to the 1st respondent, accident had taken place resulting in an injury to the petitioner-claimant. The Tribunal recorded findings on two aspects. The first aspect relates to determination of compensation and second,

relates to the liability as to whether or not the Insurance Company can be made liable to pay the compensation.

9. On first aspect, the tribunal referring to the special and general damages claimed by the petitioner-claimant under various heads, awarded a sum of Rs.3,114/- towards 'medical expenses' based on 12 medical bills marked by the petitioner as Ex.A4, towards 'loss of amenities' a sum of Rs.5,000/- is awarded, and, thus, in total a sum of Rs.8,114/- is awarded under 'special damages'.

10. In regard to General Damages, the petitioner claimed Rs.80,000/-. The tribunal viewing that though, the petitioner was unskilled and not produced any documentary evidence to prove his income, taken as Rs.100/- opining that even an unskilled labourer can earn, and arrived at Rs.36,000/- per annum. Since the petitioner was aged 25 years on the date of accident, adopted the multiplier factor '17' and taking disability at 15%, basing on the evidence of P.W.2, medical officer, arrived at Rs.91,800/-. Since the petitioner claimed Rs.70,000/- under the head of 'permanent disability', the Tribunal restricted it to Rs.70,000/-, towards 'pain and suffering' a sum of Rs.5,000/- is awarded, and, thus, in total a sum of Rs.750,00/- is awarded under 'special damages'. Thus, the petitioner-claimant, in all, was awarded Rs.83,114/- as compensation.

11. Turning to the second aspect as to the liability, the Tribunal analyzed the evidence of R.Ws.1 and 2 and Exs.B1 to B3

and Exs.X1 to X3 and held that the evidence of R.Ws.1 and 2 cannot be brushed aside and their evidence would positively prove that the driver of the auto was not possessing valid and subsisting driving licence. The Tribunal also made observation that the 2nd respondent made an attempt to examine the owner of the vehicle, 1st respondent, despite taking steps he could not succeed. Therefore, held that the 2nd respondent is not liable to pay compensation to the petitioner-claimant on account of the fundamental violation of terms and conditions of policy.

12. The learned counsel for the petitioner would submit that the Tribunal went wrong in exonerating the Insurance Company from its liability in paying the compensation.

13. Perused the orders on record. The findings recorded by the Tribunal are based on appreciation of evidence of R.Ws.1 and 2. When their evidence is analysed in the light of Exs.B1 to B3 and Ex.X3 it is clear that the driver of the auto did not possess valid and subsisting driving licence at the time of accident. Therefore, it cannot be said that the Tribunal went wrong in exonerating the Insurance Company from making payment.

14. Even the fact that the 2nd respondent made every attempt to see that the owner is examined, but could not succeed is a circumstance, that stands adverse to the case of the petitioner.

15. Therefore, in the presence of evidence of RWs.1 and 2, in whose cross-examination, nothing is brought out to favour the petitioner's stand, certainly, the petitioner-appellant is not entitled to request the Court to mulct liability on the Insurer and the finding recorded by the Tribunal, therefore, does not warrant interference.

16. The award of amounts under 'special damages' and 'general damages' cannot also be faulted. The Tribunal assigned cogent reasons in determining the amounts under each head both under 'special damages' and 'general damages'. Hence, even the petitioner-appellant is not entitled to enhancement of compensation.

17. The appeal is, therefore, devoid of any merit, and, accordingly, the same is dismissed. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the Appeal shall stand closed.

A. SHANKAR NARAYANA

Dt. 26.10.2017
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