

HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A. No.348 of 2005

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 11.10.2004, in O.P.No.211 of 1999 passed by the Chairman, Motor Accidents Claims Tribunal (District Judge), Mahabubnagar District (for brevity "the Tribunal"), awarding compensation of Rs.35,000/- as against the claim of Rs.2,00,000/- laid by him under Section 166 of the Act, for the injuries sustained by him in a motor accident that occurred on 07.10.1998.

2. Appellant is the petitioner and respondents are the respondents in O.P.No.211 of 1999. For the sake of convenience, the parties are referred to as they were arrayed in O.P.No.211 of 1999 before the Tribunal.

3. The brief facts of the case are that, on 07.10.1998, while the petitioner and 3 others were travelling in a Maruti Car bearing No.AP 9J 3536 from Hyderabad to Wanaparthi and when the car reached near Bhoothpur Village and was stopped behind a lorry bearing No.ADA 9977 and in the meanwhile, another lorry bearing No.MYY 7198 came from

Hyderabad side, driven by its driver at high speed, in a rash and negligent manner and dashed the car, due to which the petitioner and others sustained grievous injuries and the car was completely damaged. Upon complaint, the Police of Annasagar registered a case in Crime No.109 of 1998 for the offence under Section 337 of IPC against the driver of the lorry bearing No.MYY 7198 and investigated into the case.

4. The petitioner was aged about 30 years as on the date of accident, doing business in Gold and Silver at Wanaparthi and earning Rs.60,000/- per annum and due to the accident, he sustained severe injuries to his Jaw, mandible was fractured and he had undergone operation and a plate was fixed and he has also received injuries to his nose, ears and other parts of the body. He was shifted to Apollo Hospital for treatment, where he spent Rs.50,000/- towards medical expenses and, therefore, he claimed a compensation of Rs.2,00,000/- on account of the injuries sustained by him in the accident.

5. Before the Tribunal, the 1st respondent – owner of the offending lorry bearing No.MYY 7198 remained exparte and the 2nd respondent – New India Assurance Company Limited (insurer) filed counter denying its liability, alleging that the accident did not occur due to the rash and negligent driving by the driver of the offending lorry and that the petitioner is put to strict proof of his age, occupation, income and the

nature of the injuries sustained by him in the accident. It is also contended that the driver of the offending lorry was having valid subsisting driving licence and that the lorry was having a valid permit to ply. It is also alleged that the accident had occurred due to the negligent driving by the driver of the Maruti car as he has parked the car on the road without applying parking lights and, as such, the owner and insurer of the car bearing No.AP 9J 3536 are necessary parties to the petition and the 2nd respondent – insurer is not liable to pay compensation to the petitioner and that the claim is also highly excessive and, therefore, sought for dismissal of the petition.

6. The Tribunal, on a consideration of the evidence of P.W.1 – injured and the documents under Exs.A.1 to A.14 and also Exs.B.1 – copy of Policy, vide order and decree dated 11.10.2004, has allowed the petition in part, awarding a compensation of Rs.35,000/- with interest at 9% per annum from the date of the petition till realization, holding respondent Nos.1 and 2 jointly and severally liable to pay the compensation.

7. Aggrieved by the said order dated 11.10.2004 passed by the Tribunal in not awarding adequate compensation, the appellant/petitioner has preferred the present appeal seeking enhancement of compensation.

8. Heard Sri G. Madhusudan Reddy, counsel representing Sri A. Sudarshan Reddy, learned counsel for the appellant – petitioner, as well as Sri P. Bhanu Prakash, learned Standing Counsel for respondent No.2 – Insurer, while the appeal as against respondent No.1 – Owner of the offending lorry bearing No.MYY 7198 was dismissed for default vide order passed by this Court dated 19.11.2015. Perused the order under challenge and also the evidence on record.

9. Learned counsel for the appellant/petitioner contended that the compensation awarded by the Tribunal is inadequate, that the petitioner was earning a sum of Rs.60,000/- per annum and the same was not properly considered in assessing the loss of income, that though the petitioner submitted his Income tax returns for the years 1997-98, the same was not considered by the Tribunal while awarding compensation, that the petitioner was a Gold-smith by profession and he has future prospects of expansion of his business and due to the injuries sustained by him in the accident, he could not do his business as effectively as he has done before the accident and, therefore, sought to enhance the compensation.

10. On the other hand, it is argued on behalf of the learned Standing Counsel for the 2nd respondent – Insurer that the petitioner has received only one grievous injury, which is a fracture of mandible and the Medical Officer, who treated the

petitioner, has not been examined and no Disability Certificate is filed to prove the injuries and the extent of disability sustained by the petitioner in the accident and, therefore, the compensation awarded by the Tribunal is adequate and the impugned Award does not require any interference. It is also contended that the rate of interest awarded by the Tribunal @ 9% per annum is excessive and requested to reduce the same.

11. On a consideration of the arguments advanced by the learned counsel for the respective parties and also the evidence available on record, this Court is of the considered view that though the petitioner has not produced any Disability Certificate to prove the disability suffered due to the injuries sustained by him in the accident, there is ample documentary evidence available on record to show that the petitioner underwent surgery for the fracture injury sustained by him to the mandible, which fact is not in dispute. No doubt, the Medical Officer is not examined to prove the extent of disability sustained by the petitioner, however, a perusal of the documentary evidence under Exs.A.3 to A.9 and A.11 to A.14, which are Certified copy of Wound Certificate, Admission Card of FMS dental Hospital, Hyderabad, Med Point Report, Prescription of FMS Dental Hospital, X-Films (3 in number), Discharge Summary of FMS Hospital, Medical Bills, respectively, would *prima-facie* reveal that the petitioner

had suffered grievous injury. Further, the testimony of P.W.1 reveals that he was a Gold-smith by profession and the documentary evidence under Ex.A.10 – Income Tax return for the assessment year 1997-98 reveals that he was earning Rs.60,000/- per annum. There is also evidence on record to show that the petitioner has undergone treatment as an inpatient from 07.10.1998 to 11.10.1998 and underwent surgery for the fracture injury of jaw and mandible. P.W.1 in his evidence stated that he lost his earning capacity for a period of six months and unable to carry on his business because of the pain suffered due to the injury sustained by him. No doubt, in the cross-examination, suggestions were made to the witness stating that the medical bills have been fabricated for the purpose of this case, but nothing could be elicited to prove the same, as the 2nd respondent – insurer has not produced any evidence to show that the medical bills produced by the petitioner are fabricated one. Therefore, on a consideration of the evidence of P.W.1 and the nature of injuries suffered by him, the following amounts are awarded under different heads:

- (i) Towards pain and suffering undergone by the petitioner on account of the injuries i.e., laceration over the chin and abrasion right limb and keeping in view the nature of treatment undergone by him, an amount of Rs.25,000/- is awarded;
- (ii) Towards operation and medical expenses, a notional amount of Rs.20,000/- is awarded;
- (iii) As the petitioner was bed-ridden for a period of six months, an amount of Rs.30,000/- is awarded towards loss of earnings.

12. Thus, the petitioner is entitled to a total compensation of Rs.75,000/- (Rs.25,000/- + Rs.20,000/- + Rs.30,000/-). Though the learned Standing Counsel for the 2nd respondent – insurer contended that the rate of interest awarded by the Tribunal @ 9% per annum is excessive and sought to reduce the same, this Court is not inclined to interfere with the said rate of interest.

13. In the result, the Civil Miscellaneous Appeal is allowed in part, enhancing the amount of compensation from Rs.35,000/- to Rs.75,000/- (Rupees seventy five thousand only) with proportionate costs and the enhanced amount shall carry interest @ 7.5% per annum from the date of petition till the date of realization. In all other aspects, the order and decree dated 11.10.2004 in O.P.No.211 of 1999 passed by the Tribunal shall remain unaltered. No order as to costs.

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

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