

THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A.No.478 OF 2011

JUDGMENT:

Appellant-injured-claimant filed this appeal against the order and decree dated 13.12.2010 passed in O.P.No.506 of 2008 by the Chairman, Motor Accident Claims Tribunal (VIII Additional District Judge) at Nizamabad, granting compensation of Rs.15,000/- as against the claim of Rs.1,00,000/- for the injuries sustained by him in the motor accident occurred on 25.11.2007.

The appellant filed claim petition under Section 166 (1) (a) of Motor Vehicles Act, 1988, stating that on 25.11.2007 at about 5.30 p.m. while she was going to Chakradhar Nagar Thanda from Nagaram Stadium on foot, one motorcycle bearing No.AP 25M 2804 came in opposite direction being driven by its rider in a rash and negligent manner with high speed and dashed against the appellant, due to which, she fell down and sustained injuries. Immediately, she was shifted to Government Hospital, Nizamabad, where she was treated as in-patient and later she was shifted to a Private Hospital where also she was treated as in-patient and incurred Rs.50,000/- towards medical expenses. It is further stated that at the time of accident, she was hale and healthy, earning Rs.8,000/- per month by doing agriculture and due to fracture of right leg tibia, she was unable to walk properly and do any work since she suffered permanent partial disablement in the said accident. Hence, she claimed compensation of Rs.1 lakh from respondents 1 and 2.

First respondent remained *ex parte* before the Tribunal.

Second respondent-Insurance Company filed a written statement denying the averments of the petition and contending that the appellant in collusion with the first respondent falsely implicated the motor cycle for wrongful gain.

Based on the above pleadings, the Tribunal framed the following issues for its consideration:

- 1) Whether the accident has taken place due to rash and negligent riding of the motorcycle bearing No.AP 25M 2804 by its rider?
- 2) Whether the petitioner is entitled to claim compensation. If so, to what amount and from which of the respondents?
- 3) To what relief?

The second respondent filed petition under Section 170 of the MV Act before the Tribunal and the same was allowed.

On behalf of the claimant, PW-1 was examined and Exs.A.1 to A.4 were got marked. On behalf of the second respondent, no witness was examined, however, Ex.B.1-copy of Insurance Policy was got marked.

The Tribunal based on the evidence of P.W.1-injured and Exs.A.1 to A.3, certified copies of FIR, charge sheet and Wound Certificate, held that the accident was occurred due to rash and negligent driving of the motor cycle by its driver resulting in injuries to the appellant and thus answered issue No.1 in favour of the appellant.

Though PW.1 in her evidence deposed that she took treatment in a private hospital and incurred Rs.50,000/- towards medical expenses, the Tribunal disbelieved the same on the ground that the appellant neither examined any doctor from Private hospital nor filed any medical record to prove her claim. However,

the Tribunal based on Ex.A.3-Wound Certificate and the evidence of P.W.2-Doctor who deposed that on 25.11.2007 he examined P.W.1 for segmental fracture of right tibia, held that the appellant suffered one grievous injury and received medical treatment as in-patient in Government hospital and thereby awarded a sum of Rs.15,000/- towards pain and suffering. Thus, the Tribunal granted Rs.15,000/- towards compensation along with interest @ 7.5% per annum from the date of petition till realization payable by respondents 1 and 2 jointly and severally. Aggrieved by the quantum of compensation, the present appeal is filed by the appellant seeking enhancement of the compensation.

Learned counsel for the appellant would contend that the Tribunal grossly erred in not granting Rs.50,000/- towards medical expenses as deposed by P.W.1; the Tribunal ought to have granted Rs.50,000/- towards pain and suffering; the Tribunal ought to have seen that due to fracture of right leg tibia, the appellant is unable to walk properly and unable to do any work, hence, the Tribunal ought to have granted compensation towards partial permanent disability. Accordingly, he seeks enhancement of the compensation.

Per contra, learned counsel for the respondent-Insurance Company would contend that in the absence of any supporting documentary evidence and Doctor evidence, the Tribunal has rightly refused to grant compensation towards medical expenses. The Tribunal has granted just and fair compensation as per the evidence available on record and the same needs no interference of this Court. Thus, he prayed to dismiss the appeal.

In the facts and circumstances of the case and in considered view of this Court, the Tribunal having found that as per the evidence of PW.2-Doctor and Ex.A.3 Wound Certificate, the appellant has suffered segmental fracture of right tibia, which is grievous in nature, ought to have granted some compensation towards the said injury. Hence, it would be just and proper to grant a sum of Rs.5,000/- towards the grievous injury suffered by the appellant. Further, even though the appellant has deposed as P.W.1 that she took treatment in private hospital where she was treated as in-patient and incurred Rs.50,000/- towards medical expenses, she failed to produce any medical bills in support of the said claim. Hence, the Tribunal refused to grant any amount towards medical bills. However, this Court is of the view that even assuming that the appellant took treatment in Government Hospital, definitely she might have incurred some amounts towards medical expenses, transport charges and she might have lost her earnings even for some period. Hence, this Court feels that it would be just to grant Rs.10,000/- towards medical expenses in view of the nature of injury, in addition to the compensation granted by the Tribunal of Rs.15,000/- towards pain & suffering. Therefore, the appellant is entitled for the total compensation of Rs.30,000/-.

Accordingly, the compensation of Rs.15,000/- granted by the Tribunal is hereby enhanced to Rs.30,000/- along with costs and interest @ 7.5% per annum from the date of petition till the date of realization payable by respondents 1 and 2 jointly and severally. The respondents shall deposit the entire compensation amount, duly deducting the amounts already deposited, if any, to the credit

of the O.P. before the Tribunal within a period of one month from the date of receipt of a copy of this order. On such deposit, the appellant is entitled to withdraw the same.

Accordingly, the appeal is allowed in part to the extent indicated above.

Miscellaneous petitions pending in this appeal, if any, shall stand closed. There shall be no order as to costs.

(M.GANGA RAO, J)

02.11.2018
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