

THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M. A. C. M. A. No. 2817 of 2009

JUDGMENT:

This appeal is arising out of the Decree and Award in M.V.O.P.No.1009 of 2004 on the file of the Chairman, Motor Accident Claims Tribunal-cum-III Additional District Judge (FTC), Nizamabad.

2. The appellant is the claim petitioner, filed a petition under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs. 3,00,000/- on account of the injuries sustained by him in a motor vehicle accident that occurred on 08.04.2003. The Tribunal, on consideration of the evidence of the witnesses, came to the conclusion that the accident occurred due to the rash and negligent driving by the driver of the Auto bearing No.AP-25U-4401. The Tribunal awarded compensation of Rs.5,000/- for the injuries suffered by the appellant-petitioner. Aggrieved by the impugned Award, this appeal has been preferred by the appellant seeking enhancement of compensation.

3. Heard the arguments of the learned counsel for the appellant-claimant, and the learned Standing Counsel for National Insurance Company Ltd.

4. Learned counsel for the appellant submits that the Tribunal has not awarded just and reasonable compensation on consideration of the material on record.

5. Learned Standing Counsel for National Insurance Company submits that the appellant has not produced any medical evidence to prove his injuries. The disability suffered by him is not proved. The Award passed by the Tribunal is not in accordance with law.

6. A perusal of the Award passed by the Tribunal reveals that the appellant received injuries in the said accident. The appellant was examined as PW.1 and he spoke about the injuries sustained by him. He got examined PW.2-Dr. V. Akhilesh, who issued Ex.A4-Disability Certificate. The medical officer stated that the appellant has suffered 30% disability. The Tribunal, however, has not believed the multiple fractures received by the appellant, as the X-rays were not produced. Ex.A3 is the C.C. of Medical Certificate issued by Dr.Sudheer working in Government Headquarters Hospital, Nizamabad. As per the Certificate, the appellant has sustained fracture of both bones of right hand and fracture of both bones of right leg, with an abrasion over the right knee joint. In Ex.A2-charge sheet, the name of Dr. Sudheer, is shown as Medical Officer, who treated all the three persons, who sustained injuries in the accident. The Tribunal has doubted the nature of injuries suffered by the appellant as the Medical Officer-Dr.Sudheer was not examined, and the X-rays were not produced before the tribunal. It is obvious from the evidence of PW.1, Ex.A3-Wound Certificate, that the appellant was treated in

Government Headquarters Hospital. The said fact is corroborated by the investigation as per Ex.A2-charge sheet. The standard of proof in a motor vehicle accident petition need not be beyond reasonable doubt or preponderance of probabilities. The burden lies in between these two in motor accident cases. Basing on the criminal record Ex.A2-charge sheet, the testimony of injured eyewitness PW.1, and the testimony of PW.2-medical officer, who has subsequently treated him, it can safely be concluded that the appellant has received injuries I the accident. In fact, Ex.A3 is the G.C. of medical certificate filed by PW.1, would prove the injuries. The testimony of PW.2 corroborates the fact that PW.1 received two fractures. The medical officer-PW.2 examined the appellant in 2006 and issued Disability Certificate showing 30% permanent partial disability, whereas the accident occurred on 08.04.2002 i.e. before four years. Therefore, the Tribunal did not consider the disability certificate. The X-rays are not produced to show on what basis the percentage of disability was assessed by the medical officer-PW2, as 30% permanent partial disability.

7. It is also evident that in the cross examination of PW.2, he stated that he has not treated PW.1 on the date of accident, and that PW.1 approached him only for the purpose of disability certificate, and he has issued the same on consideration of the X-rays, which are not produced before this Court. The basis on which he

arrived at 30% disability has not been explained. There is a Medical Board at Headquarters Hospital for issuance of disability certificate, and PW.2 was not even a Member of the said Board. Therefore, the testimony of PW.2 in respect of 30% permanent partial disability cannot be taken into consideration.

8. Having regard to the facts and circumstances of the case, in the light of the testimony of PW.1 and basing on Ex.A1-FIR, Ex.A2-Charge sheet and Ex.A3-Medical certificate, it is clear that the petitioner received two grievous fractures and one simple injury in the accident. The amount of Rs.5,000/- towards quantum of compensation awarded by the Tribunal is inadequate. The Tribunal has not appreciated the evidence in awarding the compensation.

9. Considering the evidence available on record, the appellant is awarded the following compensation.

- (i) Rs.50,000/- towards pain and suffering for two grievous injuries and one simple injury;
- (ii) Rs.5,000/- for attendant charges, extra nourishment and transport charges; and
- (iii) Rs.6,000/- towards loss of earnings for two months.

Therefore, in all, the appellant is entitled to Rs.61,000/- towards compensation.

10. In the result, the appeal is partly allowed, enhancing the compensation from Rs.5,000/- to Rs.61,000/- with proportionate costs and interest at 7.5% per annum from the date of petition till realisation. The respondents are directed to deposit the compensation amount within one month from the date of receipt of a copy of this order. On such deposit, the appellant-claimant is permitted to withdraw the same.

Miscellaneous petitions, if any pending, shall stand closed.

31st July, 2018
EHA / Ksm

GUDISEVA SHYAM PRASAD, J



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