

THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A.No.436 OF 2014

JUDGMENT:

Appellant-claimant-injured filed this appeal against the order and decree dated 30.06.2011 passed in M.V.O.P.No.413 of 2009 by the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge, Kurnool at Nandyal, granting compensation of Rs.49,000/- as against the claim of Rs.2,00,000/- for the injuries sustained by him in the motor accident that took place on 18.05.2009.

Appellant filed claim petition under Section 166 (a) of the Motor Vehicles Act against the respondents alleging that on 18.05.2009 at about 8.15 p.m. when himself and M.Sreenivasa Reddy were proceeding on a motor cycle from Nandyal to High School Kottala Village and when they reached Booruguman vanka situated near Company Kottala village, one car bearing No.AP31-AG-2493 driven by its driver in a rash and negligent manner with high speed dashed their motor cycle due to which the appellant sustained multiple injuries. Immediately, he was taken to Government Hospital, Nandyal, and from there to Viswabharathi Superspeciality Hospital, Kurnool, where he was treated as in-patient for about 2 months and incurred medical expenditure of Rs.70,000/-. Hence, he filed claim petition for compensation of Rs.2,00,000/- against the respondents.

The owner of the offending car remained *ex parte* before the Tribunal.

The second respondent-Insurance Company filed counter denying the material averments of the claim petition and specifically denied negligence on the part of the driver of the car. It was further stated that the claim was excessive. Hence, prayed for dismissal of the claim petition.

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

- 1) Whether the petitioner sustained injuries in the motor accident with car bearing No.AP31-AG-2493 due to rash and negligent driving by its driver?
- 2) Whether the petitioner is entitled for compensation, if so, to what extent and from whom?
- 3) To what relief?

On behalf of the appellant, PWs 1 and 2 were examined and Exs.A.1 to A.7 were got marked. On behalf of the respondent-Insurance Company, RW.1 was examined and Ex.B.1 was got marked.

The Tribunal based on the evidence of P.W.1 and documentary evidence marked as Exs.A.1 to A.5 held that the motor accident was occurred on 18.05.2009 in which the appellant sustained injuries as mentioned in Ex.A.2 Wound Certificate. The Tribunal also held that the accident occurred due to rash and negligent driving of the offending vehicle by its driver. The Tribunal granted total compensation of Rs.49,000/- i.e. Rs.20,000/- towards one grievous injury, Rs.9,000/- towards three simple injuries, Rs.15,000/- towards pain and suffering and Rs.5,000/- towards medical bills, along with proportionate costs and interest @ 6% per annum against the claim of Rs.2,00,000/- with interest @ 12% per annum.

The learned counsel for the appellant would contend that the Tribunal grossly erred in disbelieving the evidence of P.W.1 and P.W.2, Ex.A.2-CC of wound certificate and Ex.A.6-CC of discharge summary and thereby committed error in granting only Rs.5,000/- disallowing the claim of Rs.70,000/- towards medical bills and extra nourishment. He would further contend that as the claimant was in Viswabharathi Superspeciality Hospital, Kurnool, for two months as in-patient, the Tribunal ought to have granted some amounts towards loss of earnings, transportation charges and attendant charges. The Tribunal granted interest @ 6% per annum which is far less than the contemporaneous bank interest rates. Accordingly, he seeks enhancement of the compensation.

Per contra, the learned counsel for the Insurance Company would contend that the Tribunal rightly granted compensation and in fact the appellant failed to show documentary evidence in support of his claim. Hence, the appeal is misconceived and liable to be dismissed.

Having heard the rival contentions and perused the record, this Court came to the conclusion that the Tribunal grossly erred in disallowing the claim of Rs.70,000/- towards medical expenses and extra nourishment. There is no plausible reason for the Tribunal to disbelieve the evidence of P.W.1 and P.W.2 coupled with the documentary evidence of Exs.A.2 and A.6. Compensation towards expenditure incurred on extra nourishment and transportation cannot be denied even though treatment was given in Government Hospital and one cannot expect positive evidence proving actual expenditure. Based on the evidence of the doctor

coupled with documentary evidence under Ex.A.2-CC of Wound Certificate, being a public document, depending on the course of treatment, in the absence of medical bills, the compensation could be granted, as held by this Court in **Gundala Mallamma vs. Anka Prasad**¹. Considering the circumstances of the case and the injuries sustained by the appellant, this Court felt it just and proper to grant a sum of Rs.50,000/- towards medical expenses and extra nourishment, Rs.10,000/- towards transportation charges and Rs.10,000/- towards loss of earnings for the period he was under treatment and took bed rest at the advice of the Doctor, in addition to the amounts granted by the Tribunal. Further, the Tribunal granted interest @ 6% per annum, which is on lower side when compared to the contemporaneous bank interest rate. Hence, the same is increased to 7.5%. Therefore, the compensation granted by the Tribunal of Rs.49,000/- is enhanced to Rs.1,14,000/- along with proportionate costs and interest @ 7.5% per annum from the date of petition till the date of realization payable by both the respondents jointly and severally.

Accordingly, the appeal is allowed enhancing the compensation to Rs.1,14,000/- along with proportionate costs and interest @ 7.5% per annum from the date of petition till the date of realization. The respondent-Insurance Company shall deposit the entire compensation amount before the Tribunal to the credit of the O.P. along with proportionate costs and interest, after deducting the amounts if any already deposited, within a period of

¹ 2004 (5) ALD 400

one month from the date of receipt of a copy of this order. On such deposit, the appellant can withdraw the same.

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

(M.GANGA RAO, J)

06.12.2018
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