

THE HON'BLE MS. JUSTICE J.UMA DEVI

M.A.C.M.A.No.109 of 2010

JUDGMENT:

The Award dated 8.10.2009 passed in O.P.No.1104 of 2007 by the Chairman of Motor Accidents Claims Tribunal-cum-Additional District Judge, Khammam is challenged by the National Insurance company Limited, which has been arrayed as 2nd respondent in the O.P.

The parties hereinafter will be referred as 'petitioner' and 'respondents' as they are arrayed in OP.No.1104 of 2007 for the sake of convenience.

The petitioner in OP.No.1104 of 2007 laid the claim for compensation against the 1st and 2nd respondents, who are the owner and insurer of the lorry bearing No.AP 27 V 9653, alleging that on 13.12.2006 while he was crossing the road near State Bank at Khammam, he was hit by the above mentioned lorry which was driven by its driver in rash and negligent manner, and, as a result of it, he received traumatic swelling with underlying fracture dislocation of right femur and injury to forehead, and for the said injuries he took treatment in the Government Hospital at Kothegudem at the initial point of time; later in the hospital of Dr. Ch.Krishna Prasad, M.S.Ortho, as an in-patient for a period of 20 days It was asserted by the petitioner that prior to his involvement in the accident he was working as a hamali, and was getting income of Rs.200/- per day. As he received severe fracture injuries to right limb, he became disabled permanently and lost the source

of his livelihood, and his family members who were depending on his earnings were also put to hardship. Therefore, they claimed compensation of Rs.1,00,000/- from 1st and 2nd respondents who were owner and insurer of the lorry which caused accident to him.

The owner of the crime lorry did not choose to contest the case. The insurer of the crime lorry alone contested the case filed by the petitioner.

In the counter filed by the 2nd respondent-insurance company, it was asserted that the petitioner without establishing the manner in which the accident took place, and that the driver of the lorry was negligent, cannot claim any compensation from this respondent.

The Court below on appreciation of the evidence of the petitioner, who was examined as PW.1 and Exs. A1 to A6, though opined that the petitioner is entitled to get compensation of Rs.1,46,880/- towards loss of earning, granted compensation of Rs.1,00,000/- as the petitioner claimed such amount towards compensation.

The standing counsel appearing for the insurance company submits that neither the doctor who issued Ex.3, wound certificate nor the Medical Officer who issued Ex.A6, disability certificate is examined by the petitioner. Even though the documents namely Exs.A.3 and A.6 were not proved by the petitioner, the Court below placing reliance on them awarded compensation of Rs.1,00,000/- to the petitioner.

The above mentioned arguments advanced by the counsel of insurance company indicate it has no grievance on the finding given by the trial court on the aspect of negligence attributed to the driver

of the crime lorry. It's only grievance is as to computation of compensation and according to it the Court below ought not to have relied on Exs.A3 to A6 which are not proved by the petitioner by examining the medical officers who have issued the certificate.

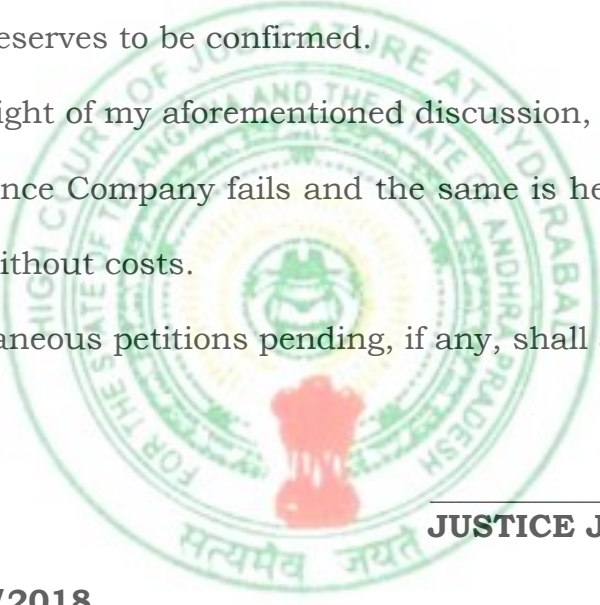
The petitioner having claimed that he received fracture to right femur, injury to right side forehead which was sutured, and was taken to the Government Hospital at Kothegudem, examined him as PW.1 and relied on wound certificate (Ex.A3). The insurance company had not adduced any evidence disproving the evidence of PW.1 and recitals of Ex.A3, would certificate where from it could be construed that the aforementioned accident was the main cause for receiving of injury to right femur by the petitioner and he was provided with first aid in the Government hospital, Kothegudem and from there he was taken to hospital of Dr.Ch.Krishna Prasad, M.S.Ortho, Kothagudem, for better treatment and there he was provided with treatment as in-patient for 20 days by incurring expenditure of Rs.25,000/- towards medical and other incidental expenditure. The above evidence of PW.1 remained unchallenged and no attempt of whatsoever nature was made by the 2nd respondent to discredit his testimony.

As the petitioner failed to examine any witnesses to establish the amounts incurred towards medical expenditure, the Court below awarded an amount of Rs.2,000/- and Rs.3000/- towards medical and treatment charges, despite the production of medical bills amounting to Rs.7,711/- which were marked as Ex.A4. As it was evident from the testimony of PW.1 that he was working as Hamali prior to the accident, the trial Court assessed his income at Rs.80/- per day and assessed the loss of earning at

Rs.1,46,880/- taking into consideration of the disability certificate issued by the Medical Board where it was opined that the petitioner is having disability of 30%. The Court below though took the view that the petitioner is entitled to get a sum of Rs.1,46,880/-, awarded Rs.1,00,000/- towards compensation as the petitioner seems to have claimed compensation of Rs.1,00,000/-. The award passed by the Court below in my considered view is not suffering from any patent illegality. As it is opined that the Court below has taken correct view in passing of the award, the award under challenge needs no interference and the same is deserves to be confirmed.

In the light of my aforementioned discussion, the appeal filed by the Insurance Company fails and the same is hereby dismissed accordingly without costs.

Miscellaneous petitions pending, if any, shall stand closed.



JUSTICE J. UMA DEVI

Date: 19/07/2018

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