

HON'BLE SRI JUSTICE T. AMARNATH GOUD

MA.CMA.NO: 1 8 9 OF 2014

J U D G M E N T :

This appeal arising out of the award and decree dated 27-07-2006 passed in MVOP.No. 159 of 2004 by the Motor Vehicle Accidents Claims Tribunal [IX-Additional District Judge], Guntur, [for short “ *The Tribunal*”).

2. The appellant, who is the claimant filed this appeal, having dis-satisfied with the quantum of compensation awarded by the Tribunal for the injuries sustained by him in a motor accident that occurred on 23-01-2004 at about 10-30 a.m. at Reddypalem Center, P.V.Palem Mandal, Guntur district.

3. The brief facts of the case are that on 23-01-2004 at about 10-30 a.m., while the petitioner-claimant along with some others were traveling in an auto bearing No. AP-7X-8201 from Chandole to go over to Nizampatnam and when the said auto reached Reddypalem village near a small canal, at that time, the driver of the auto drove the auto with high speed in a rash and negligent manner and he lost control over the auto. As a result of which, the said auto turned turtle and the petitioner-claimant sustained injuries on right leg, waist, left knee and on face. The other fellow passengers were also sustained injuries. Immediately after the accident, the petitioner-claimant was shifted to Suresh Babu Hospital, Ponnuru and later shifted to Peoples Trauma Hospital, Guntur. The matter was reported in Chandole Police Station and

the Police registered a case in Crime No. 7 of 2004 for an offence under section 338 of IPC against the driver of auto bearing No. AP-7X-8201. The accident occurred only due to the rash and negligent driving of the said auto. At the time of accident, the petitioner-claimant was aged about 22 years and he was hale and healthy. The petitioner-claimant used to sell the banana fruit on a push cart and was earning Rs.100/- per day and he used to spent the same for his family maintenance. He was the only earning member in his family. Except the said earning, there is no other source of income to the petitioner to maintain his family. Due to the injuries, the petitioner-claimant is unable to do any work as usual. An operation was conducted to right leg thigh and rods were inserted. Still the petitioner-claimant is undergoing treatment and spent Rs.20,000/- towards medical expenses. After the accident, the petitioner-claimant lost his earning capacity and loss of future earnings. The first respondent is the owner of auto bearing No. AP-7X-8201 and the second respondent is insurer of the said auto and as such, both the respondents are jointly and vicariously liable for the negligent act of the driver of the said auto are liable to pay compensation of Rs.1,00,000/-. Hence, the claim.

4. Before the Tribunal, the first respondent remained ex-parte. The second respondent filed written statement denying the averments of the claim-petition and averred that there was no negligence on the part of the driver of the auto AP-7X-8201 and prayed to dismiss the claim-petition.

5. On the basis of the pleadings, the Tribunal framed the following issues for trial:

- i) *Whether the accident occurred due to the rash and negligent driving of the driver of auto bearing No. AP-7X-8201?*
- ii) *Whether the petitioner is entitled to compensation, and if so, to what amount and against whom?*
- iii) *To what relief?*

6. To substantiate the claim, the appellant-claimant himself was examined as PW-1 and Dr.S.Hanumantha Rao and Dr.A. Srinivasa Rao were examined as PW-2 and PW-3 and marked Exs.A-1 to A-9 and Ex.X-1 and Ex.X-2. No oral and documentary evidence was let-in by the respondents.

7. On appreciation of oral and documentary evidence placed on record, the Tribunal has applied the multiplier '17' and income of the appellant as Rs.15,000/- per annum and disability was taken into consideration at 5% as deposed by PW-3 Dr.A.Srinivasa Rao and also the treatment of the appellant as in-patient in Peoples Trauma Emergency Hospital, Guntur from 23-01-2004 to 31-01-2004, awarded Rs.12,750/- towards his disability and loss of his income during that period. The Tribunal has taken into consideration the evidence of PW-3 Dr.A.Srinivasa Rao, who deposed that the appellant sustained fracture shaft of right femur and fracture of pelvis and close inter-locking nail was done and remaining injuries are treated conservatively and there is minimal pain at right knee, hip joint and suffering with permanent

partial disability and that apart the appellant sustained pain, sufferance and loss of amenities in life awarded Rs.10,000/- towards pain and suffering. The Tribunal further considered the oral evidence of PW-2 Dr. S. Hanumantha Rao, who used to deal with Administrative affairs of Peoples Trauma Emergency Hospital, wherein Ex.A-2 cash bill was issued for Rs.12,650/- by the said hospital and the same was accordingly granted besides considering Ex.A-9 two X-rays, Exs.X-1 case sheet and X-2 four x-rays, awarded total medical expenses of Rs.14,650/- which was spent by the petitioner-claimant. The Tribunal awarded total compensation of Rs.40,400/- to the appellant-claimant together with proportionate costs and subsequent interest @ 6% per annum from the date of filing of the claim-petition till the date of realization and passed a decree against the respondents holding them jointly and severally liable to pay the compensation within two months. On such deposit, the Tribunal permitted the appellant-claimant to withdraw an amount of Rs.25,000/- and balance amount of Rs.15,400/- with proportionate costs and interest shall be invested in any Nationalised bank in a fixed deposit for a period of 36 months and after maturity the appellant is entitled to withdraw the same in lump sum.

8. The claimant having dis-satisfied with the quantum of compensation awarded by the Tribunal, preferred this appeal raising various grounds in the memorandum of appeal.

9. Heard Sri T.S.Rayalu, learned counsel for the appellant and Smt.Pushpinder Kaur, learned standing counsel for the second respondent-Oriental Insurance Company Limited.

10. Before the Tribunal, the appellant-claimant examined PW-3 Dr. A. Srinivasa Rao, who treated the appellant-claimant and conducted surgery. According to the evidence of PW-3 Dr. A. Srinivasa Rao, who deposed that the appellant-claimant sustained fracture shaft of right femur, fracture of pelvis and the appellant was operated for closed interlocking nail. The appellant was hospitalized for a period of nine days and PW-3 further deposed that the appellant-claimant would suffer pain on the right knee, hip joint and permanent partial disability of 5 to 10%. Since the appellant-claimant was earning Rs.100/- per day by selling vegetables on a push cart, the Tribunal has considered his notional income of Rs.15,000/- per annum, which is meager. This Court feels that if a sum of Rs.100/- per day is taken into consideration, a sum of Rs.36,000/- would be the annual income of the appellant and assuming that the appellant would not conduct business for few days on some pretext or the other. This Court restricts the annual income of the appellant for Rs.30,000/- and the disability is treated as 10%. $\text{Rs.30,000} \times 17 \times 10/100 = \text{Rs. 51,000/-}$. The Tribunal awarded Rs.10,000/- towards pain and suffering besides Rs.14,650/- towards reimbursement of total medical expenses spent by the appellant-claimant and the same needs no interference and accordingly the award and decree of the Tribunal

is modified enhancing the compensation of Rs.40,400/- to Rs.75,650/- with interest @ 6% per annum from the date of filing of claim-petition till its realization.

11. In the result, this Civil Miscellaneous Appeal is partly allowed. There shall be no order as to costs.

12. As a sequel, miscellaneous applications if any, pending in this appeal shall stand closed.

JUSTICE T. AMARNATH GOUD



30-11-2018
I s L

HON'BLE SRI JUSTICE T. AMARNATH GOUD

MA.CMA.NO: 189 OF 2014

[R E S U L T :: APPEAL IS PARTLY ALLOWED]



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