

THE HON'BLE SRI JUSTICE P.KESHA VA RAO

M.A.C.M.A.No.888 OF 2015

JUDGMENT:

The present appeal came to be filed against the orders passed in M.V.O.P.No.301 of 2011, dated 16.02.2015 on the file of the Motor Accident Claims Tribunal-cum-First Additional District Judge, Kadapa seeking enhancement of the compensation.

The facts of the case are that on 11.01.2011 the claimant-appellant herein along with others boarded auto bearing No.A.P. 04V 8203 to go to C.K. Dinne from her village. When the auto reached near Vellaturu Harijanawada on Vellaturu to C.K. Dinne main road, the driver of the auto drove the vehicle in a rash and negligent manner at high speed, lost control and went on a heap of soil and fell down. As a result, the appellant herein sustained injuries along with others. They were shifted to RIMS Hospital, Kadapa. Since the accident has occurred due to rash and negligent driving by the driver of the auto, she filed the above said M.V.O.P. claiming a compensation of Rs.1,00,000/-.

The 2nd respondent-Insurance Company filed a written statement denying the material allegations made in the petition and contended that the appellant has to prove the rash and negligent driving of the auto by its driver, sustaining of injuries by the appellant etc. The liability of the insurance company is subject to the terms and conditions of the policy and in the present case, the driver of the auto allowed more number of passengers to travel and thereby violated the terms and conditions of the policy. Though

the seating capacity of the auto is only four passengers, at the time of accident, there were five persons travelling in the auto. The appellant is put to strict proof that she spent a sum of Rs.40,000/- for her treatment etc.

In order to prove her claim, the appellant examined herself as P.W.1 apart from P.W.2, who is a doctor and marked Exs.A.1 to A.4 and X.1 to X.3 on her behalf. On behalf of 2nd respondent, R.Ws.1 and 2 were examined and Exs.B.1 to B.3 were marked.

The learned tribunal, after hearing both the parties and analysing the evidence brought on record, by orders dated 16.02.2015 partly allowed the petition granting compensation of Rs.49,000/- to the appellant with proportionate costs and interest at the rate of 7.5% per annum from the date of petition till the date of deposit. In the order, it is also observed that the respondents 1 and 2 are jointly and severally liable to pay the compensation. Aggrieved by the said orders, the present appeal is filed by the claimant seeking enhancement of the compensation.

In the memorandum of grounds of appeal, the appellant contended that the tribunal below committed an error in granting meagre compensation ignoring the oral and documentary evidence adduced on her behalf. The appellant suffered unbearable pain and agony due to the grievous injuries sustained by her in the accident. The tribunal has also not considered the medical expenses even though the appellant sustained multiple grievous injuries apart from fracture injuries and sustained 25%

permanent disability. Ex.A.4 i.e. the disability certificate was also not considered while awarding the compensation.

Per contra, the learned standing counsel appearing for the second respondent-Insurance Company contended that the appellant miserably failed to prove her case with reference to the pain and suffering and the medical treatment taken by her. Therefore, the appellant is not entitled for enhancement of compensation.

Having heard the learned counsel and from the perusal of the material on record, it is to be seen that the appellant as P.W.1 in the cross-examination admitted that the treatment in RIMS Hospital is at free of cost. That apart, she has not produced any record regarding the treatment she has taken at RIMS Hospital and also regarding the surgery underwent by her in Himalaya Hospital at Kadapa. She has examined P.W.2-doctor to support her contention that she has undergone surgery in Himalaya Hospital, Kadapa and there is a disability, which is assessed at 25% and she cannot attend to the normal work. But in the cross-examination, P.W.2 has admitted that he has not given any treatment to the appellant. P.W.2 issued Ex.A.4-disability certificate nearly two years after the accident. He has also not mentioned the range of movements restricted due to the injuries. Though the appellant claimed that she took treatment in RIMS Hospital, Kadapa for two months, she has not produced any supporting documents. Even though the appellant claimed to have undergone surgery in Himalaya Hospital, which is a private nursing home, Kadapa, no

medical evidence is placed on record. The appellant also not placed on record any evidence to show that she appeared before the Medical Board, RIMS Hospital, Kadapa for obtaining the said disability certificate since the Medical Board, RIMS Hospital would assess the disability. Therefore, the evidence of P.Ws.1 and 2 is not inspiring confidence with regard to the surgeries underwent at Himalaya Hospital, Kadapa and the appellant incurred heavy expenditure.

The tribunal below after considering the evidence on record, awarded a sum of Rs.20,000/- towards grievous injury, Rs.6,000/- for two simple injuries apart from Rs.9,000/- towards loss of income during the treatment period and Rs.2,000/- each for attendant charges and extra-nourishment.

Though the appellant has taken a specific plea that she incurred heavy expenditure and she has undergone surgery in Himalaya Hospital, in the absence of any evidence to that effect, the same cannot be accepted. On the other hand, P.W.2, who is examined to support the contention of the appellant that she underwent surgery at Himalaya Hospital, Kadapa and she sustained 25% disability and there is restriction in the movements, in the cross-examination, she has categorically admitted that she has not given any treatment to P.W.1. In that view of the matter, this Court does not find any irregularity or illegality in the orders passed by the tribunal below. There are no merits in the appeal and the same is liable to be dismissed.

Accordingly, the M.A.C.M.A. is dismissed. No costs.

Pending miscellaneous petitions, if any, shall also stand closed.

P.KESHA VA RAO,J

15th DECEMBER 2018.

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