

HON'BLE SRI JUSTICE N.BALAYOGI

M.A.C.M.A. No.3691 of 2005

ORDER:

The appellant/claimant, aggrieved by the award and decree dated 01.03.2005 in M.O.P.No.1387 of 2003 on the file of the Motor Accidents Claim Tribunal-cum-IX Additional District and Sessions Judge (F.T.C.) Visakhapatnam, preferred this appeal.

2. On 29.01.2003 at about 8.15 p.m. while the claimant, along with his friend, was proceeding on the moped bearing No. AP 31 AA 9645 and reached near Thatichetlapalem junction, a motor cycle bearing No. AP31 AV 798, driven by respondent No.1, in a rash and negligent manner in a high speed, came in the opposite direction and dashed the moped of the claimant; and, in the said accident, his little finger was fractured.

3. Respondent No.1 remained *ex parte*. Respondent No.2 - Insurance Company filed counter contending that the injury received by the appellant – claimant is simple in nature; and the amount claimed is excessive.

4. Based on the contentions of both parties, the Tribunal settled the following issues.

1. Whether the petitioner sustained injuries on account of rash and negligent driving of the vehicle bearing Reg.No.AP 31 AB 798 by its driver?
2. Whether the petitioner is entitled to compensation? If so, to what amount and from whom?

3. To what relief ?

5. On behalf of the claimant, P.Ws.1 to 3 were examined and Exs.A1 to A12, besides Ex.X1 was marked. On behalf of the respondents, no oral and documentary evidence was adduced.

6. The Tribunal, having considered the material on record, came to the conclusion that the accident occurred due to rash and negligent driving of the rider of the crime vehicle. Based on the evidence of PW.1, corroborated by Ex.A.9 - disability certificate; Ex.A.4 - medical bills; Ex.A.5 - Certificate issued by PW.2 who treated PW.1; and Ex.A.8 - Bunch of X-rays, the Tribunal came to the conclusion that PW.1 sustained fracture injury to his right little finger and awarded Rs.500/- towards transportation; Rs.1500/- towards extra nourishment and medicines; Rs.2,000/- towards pain and suffering; Rs.15,000/- towards loss of salary; and, in total, awarded compensation of Rs.19,000/-. Dissatisfied with the compensation awarded, the present appeal is filed.

7. The contention of the learned counsel for the appellant - claimant is that meagre amount was awarded without considering the disability certificate issued by PW.2.

i. Per contra, respondent No.2 - Insurance Company contended that the award passed by the Tribunal does not suffer from any illegality warranting interference of this Court.

ii. There is no dispute with regard to the finding of rash and negligent driving of the crime vehicle. The dispute is only with regard to the quantum of compensation. The Tribunal having considered the evidence of PW.1, supported by documentary evidence, Ex.A.1 – FIR, came to the right conclusion that the crime vehicle came in a high speed in a rash and negligent manner in the opposite direction and dashed the moped.

8. The petitioner made a claim of Rs.1,000/- towards transportation charges to hospital for the fracture of right little finger. Even though, no proof was filed, Rs.500/- was awarded towards transportation as against claim of Rs.1,000/-.

9. The Tribunal, having considered Ex.A.4, bunch of medical bills, along with prescriptions and Ex.A.8 – bunch of X-rays, awarded Rs.1,500/- towards extra nourishment charges.

i. Against the claim of Rs.10,000/- under the head 'pain and suffering', the Tribunal, considering the fact that right little finger was fractured, awarded Rs.2,000/-.

ii. Having considered the evidence of PW.1, Ex.A.7- Pay Certificate for April, 2002; Exs.A.10 and A.11 – pay slips for the months of February and March, 2003 respectively; and the employment of petitioner that he is working as Senior Track Points man, and considering the nature of his duties as operation of levers in cabin and near railway tracks, awarded

Rs.15,000/- as compensation. In total, the Tribunal awarded Rs.19,000/- as just compensation.

iii. There is no irregularity or illegality in the findings of the Tribunal and just compensation was awarded.

iv. In the result, the Appeal fails and is, accordingly, dismissed. Miscellaneous Petitions, if any, pending in this appeal shall stand dismissed.

N.BALAYOGI,J

Dt:23.10.2018
usd

