

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A.No.2146 of 2009

JUDGMENT:

This appeal is arising out of order, dated 20.11.2006, in O.P.No.101 of 2004 on the file of the Chairman, Motor Accident Claims Tribunal-cum-I Additional District Judge, Adilabad.

2. The appellant is the claimant, who filed the aforementioned O.P. under Sections 166(1)(A) and 163-A of the Motor Vehicles Act, 1988 claiming a compensation of Rs.3,00,000/- against respondent No.1 – the owner of the offending vehicle and respondent No.2 – the New India Assurance Company Limited.

3. The brief facts of the case are that on 14.09.2003, while the appellant along with his friend – Chintapandu Sudhakar were returning to Nirmal from Adilabad on a motorcycle bearing registration No.AP 1D 1087 after attending the work of taking photos and video in a marriage, when they reached the outskirts of Nirmal near Bail Bazaar, NH-7 road, during the mid night, one TVS XL scooter bearing registration No.AP 15 TR A 1211 came in the opposite direction, being driven in a rash and negligent manner, and dashed against the motorcycle of the appellant, as a result of which, the appellant and his friend fell down and received injuries. The appellant suffered fractures to the forehead, head and neck,

bifrontal depressed fracture, contusion to right frontal lobe and other injuries and immediately, he was shifted to the Government Civil Hospital, Nirmal, wherein Dr.Suresh – the Civil Assistant Surgeon, treated him and after giving the first-aid, the appellant was referred to Orthopaedic Surgeon, and thereafter, he was referred to Nizam's Institute of Medical Sciences (NIMS), Hyderabad, wherein he was treated as inpatient for the fractures suffered by him in the department of Plastic Surgery from 15.09.2003 to 01.10.2003. Thereafter, the appellant was treated as out-patient at L.V.Prasad Eye Institute, Hyderabad. The Police registered a case in Crime No.149 of 2003 under Section 338 I.P.C. against the rider of TVS XL scooter and filed the charge sheet against him. Before the Tribunal, respondent No.1 remained *ex parte* and respondent No.2 – the Insurance Company filed its counter-affidavit denying its liability contending that the accident occurred due to the negligent driving of the rider of the motorcycle bearing No.AP 1D 1087 and that the O.P. was bad for non-joinder of necessary parties.

4. The Tribunal, on consideration of the evidence of the witnesses – P.Ws.1 and 2 - the appellant himself and the Medical Officer, and the documents – Exs.A-1 to A-10, has allowed the O.P. in part, awarding compensation of Rs.30,000/- with proportionate costs and interest at 7% per annum from the date of the O.P. till realisation. The Tribunal fastened the liability on both

respondent Nos.1 and 2. Aggrieved by the impugned order, the claimant preferred the present appeal seeking enhancement of the compensation.

5. Heard the arguments of the learned counsel for the appellant and there is no representation on behalf of the respondents.

6. The learned counsel for the appellant has mainly submitted that the Tribunal has not taken into consideration the disability suffered by the appellant though there is enough evidence on record to prove the said fact. He has further submitted that though the appellant produced the medical bills, the Tribunal has awarded only a meagre amount of Rs.10,000/- under the head of medical expenses. In support of the above submissions, the learned counsel has placed reliance on the evidence of P.W.2 and the documentary evidence.

7. As regards the contention of the learned counsel for the appellant regarding the disability suffered by the appellant, a perusal of the record shows that the appellant produced Ex.A-10 – the medical certificate for the blind and visually impaired, dated 13.02.2004, issued by L.V.Prasad Eye Institute certifying that the appellant suffered 20% visual impairment and the cause of the blindness was described as traumatic macular hole to the right eye. That apart, in his evidence, P.W.2 – Dr.D.Mukund Reddy, NIMS,

Hyderabad, deposed that the appellant was admitted on 15.09.2003 with injuries alleged to have been received by him in a road accident occurred on 14.09.2003. According to P.W.2, the appellant was operated on 16.09.2003 by the Neuro Surgeons and was further operated for the fractures to his facial bones on 26.09.2003 involving fixing of fractures and bone grafting etc., and was discharged on 01.12.2003 and thereafter, he was treated as outpatient till 20.10.2003. P.W.2 further deposed that the injuries suffered by the appellant were grievous in nature and that Ex.A-4 - discharge card, Ex.A-5 - medico legal patient record, Ex.A-7 - essentiality certificate/medical bills and Ex.A-8 - patient bills were issued by NIMS, Hyderabad and Ex.A-9 was the CT scan of brain of the appellant. Nothing was elicited from the cross-examination of P.W.2 to disbelieve his testimony. From the above, it is apparent that the appellant suffered 20% disability, however, the Tribunal has not considered the same and awarded only Rs.20,000/- for the pain and suffering for the injuries.

8. As regards the contention of the learned counsel for the appellant regarding the medical expenditure incurred by the appellant, a perusal of the record shows that the appellant produced the medical bills - Exs.A-7 and A-8 issued by NIMS, Hyderabad, showing that he incurred medical expenses of Rs.54,824/- and Rs.42,835/- respectively and the total comes to Rs.97,659/-, and

P.W.2 also affirmed the genuineness of these documents in his evidence. From the above, it is evident that the appellant incurred the above medical expenditure, however, the Tribunal has awarded only Rs.10,000/- under this head.

9. On consideration of the evidence on record, it is obvious that the appellant undergone treatment/operations in different hospitals for the injuries received by him in the road accident; that he suffered 20% disability; that there is no reason for disallowing the medical expenditure claimed by him and that therefore, the compensation awarded by the Tribunal does not appear to be just and adequate. Therefore, the compensation awarded by the Tribunal under the head of paid and suffering for the injuries is enhanced from Rs.20,000/- to Rs.60,000/- and under the head medical expenses is enhanced from Rs.10,000/- to Rs.97,659/- and the total comes to Rs.1,57,659/- (60,000 + 97,659) .

10. In the result, the appeal is partly allowed enhancing the compensation awarded by the Tribunal from Rs.30,000/- to Rs.1,57,659/- (Rupees one lakh, fifty-seven thousand, six hundred and fifty-nine only) with proportionate costs and interest at the rate of 7% per annum from the date of the O.P. till realization. The respondents shall deposit the compensation amount, as enhanced by this Court, before the Tribunal within a period of one month from the date of receipt of a copy of this order.

The amount, if any, already deposited by the respondents shall be given credit to. On deposit of the compensation amount by the respondents, the appellant is entitled to withdraw the same without furnishing any security.

11. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

GUDISEVA SHYAM PRASAD, J

22nd June, 2018
GHN

