

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No.875 of 2009

JUDGMENT :

This Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for brevity "the Act"), is preferred by the appellant-petitioner seeking enhancement of compensation, challenging the order and decree dated 12.08.2008 in M.O.P.No.1768 of 2005 passed by the Chairman, Motor Accidents Claims Tribunal-cum-IV Additional District Judge, Visakhapatnam (for brevity "the Tribunal"), awarding compensation of Rs.6,500/- as against the claim of Rs.1,00,000/- laid by him under Section 166 of the Act, for the injuries sustained by him in a motor accident that occurred on 02.05.2005.

2. Appellant is the petitioner, respondent No.1 is the driver of the Bus bearing No.AP 11Z 1893, respondent No.2 is the Depot Manager, Waltair Depot, and respondent No.3 is the Chairman-cum-Managing Director of A.P. State Road Transport Corporation (for brevity "the Corporation"). For the sake of convenience, the parties are referred to as they were arrayed in M.O.P.No.1768 of 2005 before the Tribunal.

3. The brief facts of the case are that the petitioner, who is a minor boy as on the date of accident, filed the claim petition being represented by his father. The petitioner used to work

in New Srirama Ginning Works and earn Rs.1,500/- per month. On 02.05.2005, while the petitioner was going on his bicycle and when he reached Sulabh Complex near Kobbarithota, Visakhapatnam, the Bus bearing No.AP 11Z 1893 belonging to the Corporation, driven by its driver in a rash and negligent manner, dashed against the petitioner, as a result of which the petitioner sustained grievous injuries and fracture to his right tibia. The police of II Town Traffic Police Station, Visakhapatnam, registered a case in Crime No.25/2005 against the driver of the offending Bus. The petitioner has filed the aforesaid claim petition against respondents – Corporation claiming compensation of Rs.1,00,000/- on account of the injuries sustained by him in the said accident. The 1st respondent-driver of the bus remained exparte. Respondent Nos.2 and 3 filed counter denying the liability of the Corporation.

4. On consideration of the evidence of witness P.W.1 and the documentary evidence under Exs.A.1 to A.3 adduced on behalf of the petitioner, besides documentary evidence under Ex.C.1 – Copy of Case Sheet issued by K.G. Hospital, Visakhapatnam, by the impugned order and decree dated 12.08.2008, the Tribunal has partly allowed the claim petition awarding compensation of Rs.6,500/- under various heads with interest @ 6% per annum from the date of the petition i.e., from 22.12.2005 till 04.11.2007 and from 04.04.2008 till

the date of realization, with a further direction that all the respondents are jointly and severally liable and shall pay the amount of compensation within thirty days from the date of the Award. Having dissatisfied with the amount of compensation awarded by the Tribunal, the appellant-petitioner has preferred the present appeal seeking enhancement of compensation.

5. Learned counsel for the appellant-petitioner is not present and there is no representation on his behalf. Heard the arguments of Sri S.V. Ramana, counsel representing Sri K. Madhava Reddy, learned Standing Counsel for respondent Nos.2 and 3 – Corporation. Perused the order under challenge and also the evidence on record.

6. As seen from the grounds of appeal, it is the contention of the petitioner that the Tribunal has committed grave error in granting a meager sum of Rs.6,500/- only as against the claim of Rs.1,00,000/- towards the injuries sustained by the petitioner in the accident. It is contended that though the petitioner suffered compound fracture of tibia and underwent surgery, the Tribunal erred in holding that the surgery was not done. It is further contended that even under 'No fault liability', a minimum amount of Rs.25,000/- ought to have been awarded by the Tribunal.

7. Learned Standing Counsel for the respondents – Corporation submits that the petitioner is not entitled for more than Rs.6,500/-, for the reason that the injuries suffered by him are simple in nature, which are as under:

1. 2 x 2 c.m., laceration on the lateral surface of right ankle.
2. Complaining pain in centre of scalp.

It is submitted that as the above injuries suffered by the petitioner are simple in nature, the compensation awarded by the Tribunal is just and reasonable.

8. As seen from the record, the petitioner was examined as PW.1 and he filed the documents under Exs.A.1 to A.3, which are attested xerox copies of FIR, M.V. Inspector's Report and Wound Certificate, respectively. Besides the same, Case Sheet issued by K.G. Hospital, Visakhapatnam, was also marked as Ex.C.1. The observations of the Tribunal with regard to the Medical evidence clearly reveal that the petitioner has not examined the Medical Officer, who treated him in the Hospital, as he has retired from service. Therefore, the Tribunal has called for Ex.C.1 - Case Sheet issued by K.G. Hospital, Visakhapatnam, pertaining to the petitioner, which shows that the petitioner was admitted in the Hospital on 02.05.2005 for the injury sustained by him to the lower end of tibia and he was discharged on 09.05.2005. It further shows that A/K slab and bandage were applied to the injury sustained by him and he was not operated. Therefore, on

consideration of the evidence on record and taking into consideration the pain and suffering undergone by the petitioner for the injuries sustained by him in the accident, this Court is of the view that the petitioner is entitled for a total compensation of Rs.20,000/-.

9. Accordingly, this appeal is allowed in part, enhancing the amount of compensation from Rs.6,500/- to Rs.20,000/- (Rupees twenty thousand only). Except enhancing the amount of compensation, in all other respects, the impugned order dated 12.08.2008 passed by the Tribunal shall remain unaltered. The respondents are directed to deposit the total amount of compensation within one month from the date of receipt of a copy of this judgment. On such deposit, the petitioner is permitted to withdraw the entire amount of compensation. No order as to costs.

10. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

GUDISEVA SHYAM PRASAD, J

14.06.2018.
Msr

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No.875 of 2009



14.06.2018
Msr