

HONOURABLE MS JUSTICE J.UMA DEVI

M.A.C.M.A.No.477 OF 2008

ORDER:

Order dated 24-11-2007 passed in O.P.No.65 of 2005 by the Motor Accidents Claims Tribunal-cum-IV Additional District and Sessions Judge, Fast Track Court, Ranga Reddy District is assailed in this appeal by the appellant/claimant in the aforesaid O.P. on the ground that the tribunal erred in holding that he was equally responsible for the occurrence of the accident and that he was not reasonably compensated and no reasoning whatsoever was recorded by the tribunal for awarding meagre compensation of Rs.15,000/- under the head of pain and suffering.

The appellant herein is the claimant in O.P.No.65 of 2005. The appellant-Sri P.Sanjeeva Reddy claimed compensation of Rs.3,00,000/- from the owner of Cycle and insurer of the motor cycle bearing No.AP 29-1772, having received injuries in the road accident dated 7-9-2004 which occurred near Naveen High School, Hasthinapur, due to the negligent driving of the above mentioned motor cycle by its rider.

The case of the appellant was that on 7-9-2004 at about 9 A.M., while he was crossing the road near Naveen High School, Hasthinapur, a Hero Honda Motor Cycle bearing No.AP 29-1772 driven by the driver in a rash and negligent manner came with a high speed and dashed him and as a result of it, he fell down and

received fracture injuries to his left leg apart from injuries all over his body.

The appellant/claimant, to prove his case, examined himself as P.W.1 and Dr.P.Raju under whose care and supervision, he obtained treatment in a Multi Specialty Hospital, as P.W.2. The tribunal on appreciation of evidence of P.W.1 opined that the appellant was also equally responsible for the occurrence of the accident, and he contributed for the occurrence of the accident, fixed negligence as against the appellant and the Motor cyclist equally in the ratio of 50 : 50 per cent. Being aggrieved by the finding recorded by the tribunal stating that the appellant contributed for the accident, he approached this court by preferring the present appeal.

Since the main attack of the appellant is on the finding of the tribunal that he was equally responsible for the occurrence of the accident, evidence of P.W.1 needs to be reappreciated. The fact that the owner of the offending motor vehicle has not participated in the proceedings before the court below is not in dispute. Filing of charge sheet against the rider of the Motor Cycle has not been denied by the 2nd respondent. The Charge sheet which is marked as Ex.A.2 filed by the petitioner indicates that prima facie material is there on record to say that the rider of the motor cycle is at fault.

The appellant's contention is that while he was crossing the road, he was hit by Motor Cycle which came from B.N.Reddy Nagar side with high speed. It is true that the appellant/claimant, during the course of examination, deposed that he saw the motor cycle

coming with high speed. But from the said statement made by him, it is difficult to hold that he was equally negligent, and he did not take precautions while crossing the road etc., The court below, without proper appreciation of evidence available in the case record, came to a wrong conclusion that the appellant contributed for the occurrence of the accident, and he was equally negligent, as per law. Admittedly, no evidence as such was adduced by the Insurance company to disprove the evidence of P.W.1 who in categorical terms stated that the motor cyclist was at fault and the said evidence of P.W.1 was not disproved. Admittedly, no evidence was adduced by establishing that all required precautions were taken by the motor cyclist while driving the motor cycle.

It is true that the evidence available in the case record discloses that the claimant observed the motor cycle coming with high speed but through such evidence, it is difficult to hold that the claimant is equally responsible for the occurrence of the accident. Fixing of negligence on the part of rider of motor cyclist and the appellant/claimant herein equally based on his statement that he saw the motor cyclist coming with high speed is wholly misconceived. However, taking into consideration of evidence on record, I am of the view that there was negligence to some extent on the part of claimant also. I feel it appropriate to fix the negligence on the part of the rider of the motor cycle and the claimant herein in the ration of 75:25 per cent.

The appellant/claimant has received a lacerated wound to his left leg apart from fracture injury to both bones of his left leg, and an abrasion over face etc. as per Exs.A.3 to A.6. The above mentioned documents clinchingly establish the nature of injuries received by him as an inpatient etc., and treatment taken.

The Tribunal, on appreciation of evidence given by P.W.1 (appellant herein), has assessed his income as an electric contractor at Rs.4,000/- per month. Upon consideration of the nature of injuries received by him, the court below has awarded a sum of Rs.25,000/- under the head of "loss of earnings". Medical bills, statement of account and out patient card and the material evidence available in the case record are thoroughly appreciated by the court below before awarding compensation of Rs.50,000/- under the head Extra nourishment and Medical expenditure. The compensation awarded by the tribunal under the head of medical expenditure and extra nourishment and the loss of earning during the time of treatment taken by the petitioner as inpatient appears to be reasonable and the same, in my view, needs no intervention. The tribunal, upon consideration of evidence on record that the petitioner received fracture injuries to both bones of left leg for which he took treatment as an inpatient at Anurag Orthopaedic Multi Speciality Hospital, Chaitanyapuri, rightly came to a conclusion that he could not attend the work for a period of three months and accordingly awarded a sum of Rs.12,000/- under the head of loss of earnings. Since the amounts awarded by the tribunal under the head of extra Nourishment, Medical treatment, loss of

earning and transportation appear to be reasonable and adequate, this court is not inclined to disturb the findings recorded by the tribunal on the issue of quantification of compensation except with regard to pain and suffering and to the extent of apportionment of negligence in the ratio of 50 : 50 per cent as against the rider of the motor cycle and the appellant herein.

The Tribunal taking into consideration of the evidence given by P.Ws.1 and 2 which discloses that the petitioner has to undergo further surgery for removal of implant, has awarded a sum of Rs.12,000/- under the head of "future medical expenditure". The evidence given by P.W.2 in respect of future surgery which the petitioner may have to undergo for removal of implant has been rightly appreciated for awarding a sum of Rs.12,000/- under the head of "Future Medical expenditure".

The petitioner seems to have received fracture injuries to both bones of his left leg. Though it was observed by the tribunal that the petitioner received fracture injuries to both bones of his left leg, it only awarded a sum of Rs.15,000/- under the Head of 'pain and suffering' without proper appreciation of the fact that the pain and trauma which he suffered would not be compensated in terms of money. The petitioner has claimed a sum of Rs.25,000/- under the head of "pain and suffering" in respect of fracture injuries he received to both bones of his left leg and the same is in my view may have been awarded as claimed by him in stead of reducing it to Rs.15,000/-.

Assessing the income of the petitioner/appellant at the rate of Rs.4,000/- per month approximately, the tribunal awarded compensation of Rs.81,600/- as he is having the disability of 10% to 15% which is permanent as deposed by P.W.2. Since the petitioner was awarded with adequate and reasonable compensation under the head of "loss of earning". Taking into consideration of the fact that he is having disability of 10 : 15 % because of fracture to both bones of left leg, this court has not seen any extraneous circumstances to modify the compensation awarded under the head of loss of earning.

The material available on the record does not disclose that the second respondent has come up with the plea that the terms and conditions of the policy obtained in respect of the offending vehicle are violated by its owner. Since there is no plea, such as, violation as to the terms and conditions of policy by the vehicle owner, the Tribunal has rightly held that the insurance company is liable to pay compensation to the claimant/appellant herein along with the vehicle owner.

In view of my findings fixing the liability at the ration 75:25 as against the motor cyclist and the claimant/appellant herein, the claimant/appellant is entitled to get only 75% of total compensation.

In view of my aforementioned discussion, the appellant/claimant he is entitled to get a sum of Rs.25,000/- under the head of pain and suffering as has been claimed by him. The appellant is, therefore, entitled to get compensation of Rs.25,000/- for pain and suffering, Rs.12,000/- for future medical expenditure,

Rs.1,000/- for transport charges, Rs.50,000/- for extra-nourishment, medical treatment and Rs.81,600/- for permanent disability and Rs.12,000/- for loss of earnings, totalling to Rs.1,81,600/-. Since it is held that the appellant/claimant also contributed for occurrence of the accident by not taking necessary precaution while crossing the road, by fixing negligence against the rider of the motor cycle and claimant in the ratio of 75:25 percent, he is entitled to get Rs.1,36,200/-.The amount of Rs.1,36,200/- is payable to the appellant/claimant by the first and second respondents who are held liable jointly and severally together with interest at 7.5% from the date of filing of the petition to till realization.

In the result, the appeal is partly allowed. No costs.

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

JUSTICE J.UMA DEVI

Dated -3-2018.

Dvs

HONOURABLE MS JUSTICE J.UMA DEVI



M.A.C.M.A.No.477 OF 2008

Dated -3-2018.

Dvs