

THE HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Civil Miscellaneous Appeal No. 3498 of 2004

and

I.A.No.4 of 2004

(Cross Objection (SR) No.70315 of 2004)

Common Judgment:

This appeal along with the Cross-objections filed by the claimant is being disposed of by this common judgment.

This appeal was preferred by the third respondent – Insurance Company against the award passed in O.P.No.491 of 2002, dated 27.04.2004, by the Motor Accidents Claims Tribunal-cum-District Judge, West Godavari at Eluru.

The claimant filed the claim petition claiming an amount of Rs.2,10,000/- for the injuries sustained by him in the motor accident that occurred on 03.10.2001. It was stated that when the petitioner along with his friend went to second show cinema and after they were waiting for a bus to go to Vatluru near old bus stand, the first respondent driver of the lorry bearing registration No.AP-11T-9313 stopped the vehicle and offered to take them to their destination. The petitioner and his friend boarded the lorry to go to Vatluru and, when they reached Vatluru, the first respondent stopped the vehicle near bye-pass junction behind an old tanker which was stationed on the road side. When the petitioner was paying the fare to the cleaner standing on the left side of the vehicle, the first respondent moved the vehicle and hit the petitioner. Then the petitioner was thrown away and fell down on the road side and the lorry proceeded further and dashed the tanker stationed at a short distance. In the said accident, the petitioner sustained a compound fracture to the left leg above the knee joint and the muscle over the left leg was peeled off.

He took treatment in Eluru and at Kakinada. A sum of Rs.50,000/- was incurred for treatment.

The first respondent filed a counter denying the petition averments and disowning his responsibility for the claimed amount.

The second respondent remained *ex parte* and the third respondent filed a separate counter. It is stated that the petitioner was an unauthorized passenger and the first respondent driver was not having valid driving license to drive the heavy goods vehicle. The claim was excessive.

On the basis of above pleadings, the following issues were framed.

1. Whether the accident occurred due to rash and negligent driving of the lorry bearing No.AP-11T-9313 driven by its driver – 1<sup>st</sup> respondent?
2. Whether the petitioner is entitled to claim any compensation? If so to what amount against which of the respondents?
3. To what relief?

The petitioner was examined as PW.1 and marked Exs.A1 to A5. Whereas, on behalf of the respondents one D. Venkata Rao was examined as RW.1 and Exs.B1 and B2 were marked.

The Tribunal on the basis of evidence held that the accident occurred due to rash and negligent driving of the driver of the lorry, first respondent. With regard to injuries sustained by the petitioner in the accident and the amount for which the petitioner is entitled to, the Tribunal perused Ex.A4 disability certificate issued by the Chairman of the Medical Board holding that the petitioner was having 50% disability, but since he was not examined in support of the claim of disability and the Tribunal noticed that PW.1 attended the Court with the help of walker, the Tribunal came to the conclusion that he sustained fracture and was

unable to move for some time. When a bunch of medical bills were filed for a sum of Rs.20,323/-, an amount of Rs.15,000/- was awarded towards medical expenses. For extra nourishment an amount of Rs.3,000/- was awarded besides awarding an amount of Rs.10,000/- towards pain and suffering. In respect of partial disability an amount of Rs.30,000/- was awarded. Thus, in all, an amount of Rs.58,000/- was awarded with interest at 9% p.a., from the date of petition till realization by its award dated 27.04.2004. Seeking enhancement of the said amount, the claimant filed cross objections, whereas challenging the liability fixed on the Insurance Company, the Insurance Company preferred the appeal.

Learned counsel appearing for the appellant submitted that the petitioner before the Tribunal was an unauthorized passenger and the Insurance Company should not have been made liable for payment of the awarded amount. The evidence of RW.1 was taken into consideration by the Tribunal, but no issue was framed with regard to liability of the third respondent for the amount claimed by the claimant.

There is no dispute that the petitioner was injured in the accident and he sustained grievous injuries. Except filing Ex.A4 disability certificate, no other evidence is available on record to show the nature of injuries sustained by the petitioner and the case sheet was not filed. The accident occurred when the petitioner was on the road and there is no evidence to show whether the petitioner travelled in the vehicle as unauthorized passenger or not. In the absence of evidence, the point raised by the learned counsel for the appellant cannot be countenanced. This Court feels that the amount already awarded by the Tribunal is sufficient in the facts and circumstances of the case and does not warrant any enhancement.

Accordingly, the Civil Miscellaneous Appeal as well as the Cross-objections are dismissed confirming the award of the Tribunal passed in O.P.No.491 of 2002, dated 27.04.2004. There shall be no order as to costs.

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

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A. RAMALINGESWARA RAO, J

Date: 10.04.2018  
Nsr

