

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL MISCELLANEOUS APPEAL No.482 of 2004

JUDGMENT:

This appeal is preferred by the second respondent in O.P.No.568 of 1999 on the file of the Motor Accident Claims Tribunal (Additional District Judge), Nizamabad. The first respondent herein filed the said claim petition stating that on 17.01.1998 when he was traveling in the jeep bearing No.MH 26C 395 from Nizamabad in order to go to Bhainsa, at about 12.30 pm when the jeep reached near Abbapur at Dharmaram road Chowrastha, the driver of the jeep drove the jeep at a high speed and in a rash and negligent manner, as a result of which the jeep turned turtle. The claimant sustained fracture to left leg, fracture to skull and received multiple and grievous injuries on other parts of the body. Immediately he was shifted to the headquarters hospital, Nizamabad, and was treated as inpatient by spending an amount of Rs.45,000/- towards medicines and extra nourishment. He was hale and healthy, but for the accident which caused him permanent partial disability.

The owner of the jeep remained *ex parte* and the second respondent – Insurance company, resisted the claim. The Insurance Company denied the allegation that the accident occurred due to rash and negligent driving of the jeep by its driver. The age, avocation and earning of the injured was denied.

On the basis of the above pleadings, the following points were framed for consideration:

- “1. Whether the accident was due to rash and negligent driving of the jeep bearing No.MH-26-C-395 by its driver?

2. Whether the petitioner is entitled for compensation. If so, to what amount and from which of the Respondents:

3. To what relief?"

The claimant was examined as P.W.1 and he examined Dr.L.Ramulu as P.W.2. He marked Exs.A1 to A4. The Insurance Company examined R.W.1 and marked Exs.B1 and B2.

On the basis of the evidence, the Tribunal held that the accident occurred due to rash and negligent driving of the jeep bearing No.MH 26C 395 by its driver. The Tribunal noticed that Ex.A3 – Medical Certificate, was issued by one Dr.T.Narsing Rao and Ex.A4 – Disability Certificate, was issued by P.W.2 stating that the claimant sustained 25% permanent partial disability. Since there was contradiction between the Medical Certificate issued under Ex.A3 by Dr.T.Narsing Rao and the evidence of P.W.2, the Medical Certificate issued under Ex.A3 was eschewed from consideration. By taking into consideration the Disability Certificate issued under Ex.A4, an amount of Rs.30,000/- was granted as compensation to the claimant, besides awarding an amount of Rs.10,000/- for medicines and extra nourishment. The Tribunal also awarded an amount of Rs.10,000/- towards pain and suffering. Thus, the Tribunal, by its order dated 03.09.2003, awarded an amount of Rs.50,000/- to the claimant with proportionate costs and interest @ 9% per annum from the date of the petition till the date of realization. Challenging the same, the present appeal is filed.

Learned Counsel for the appellant – Insurance Company, challenged the quantum of compensation stating that though P.W.2 stated that the claimant sustained 25% permanent partial disability,

a lump sum amount of Rs.50,000/- was awarded without applying any multiplier or taking into consideration the avocation of the claimant.

The Disability Certificate issued under Ex.A4 by P.W.2 was not impeached before the Tribunal. In those circumstances, the award of an amount of Rs.30,000/- cannot be found fault. Though the claimant stated that he spent nearly an amount of Rs.45,000/- towards medicines and extra nourishment, only an amount of Rs.10,000/- was awarded under the said head. In view of the injuries, the amount of Rs.10,000/- awarded towards pain and suffering cannot be held to be on higher side.

By taking into consideration the over all facts and circumstances of the case, the amount of Rs.50,000/- awarded is just and proper and, in view of the same, the appeal fails and is, accordingly, dismissed confirming the order of the Tribunal. The miscellaneous petitions pending in this appeal, if any, shall stand closed. There shall be no order as to costs.

(A.RAMALINGESWARA RAO, J)

12.04.2018

vs