

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL MISCELLANEOUS APPEAL No.3705 of 2004

JUDGMENT:

This is a claimant's appeal seeking enhancement of compensation awarded in M.V.O.P.No.350 of 2001 by the Chairman, Motor Accidents Claims Tribunal-cum-V Additional District Judge, Chittoor at Tirupati, by an order, dated 16.07.2004.

2. The case of the claimant is that he received injuries in a motor accident that occurred on 05.08.2001 at about 5:25 PM at RTC bus stand, Puttur on Puttur Nagari Main Road, while he was proceeding on his motor cycle along with his wife, the driver of Tata Sumo bearing No.AP-03-E-5819 drove the vehicle in a rash and negligent manner and dashed against the motor cycle, due to which he sustained injuries and initially, he was shifted to Government Hospital, Puttur and later shifted to Vijaya Hospital, Chennai, for better treatment.

3. The 1st respondent remained *ex parte* and the 2nd respondent contested the case. It was alleged that the claimant himself was responsible for the accident and he did not suffer any disability. It was also alleged that at the time of accident, the claimant was not having valid driving licence and thus, the terms and conditions of insurance policy were violated.

4. On the basis of said pleadings, the following issues were framed for trial:

“1. Whether the accident occurred on account of rash and negligent driving of the driver of Tata Sumo bearing No.AP-03-E-5819 on 05.08.2001 which resulted injuries to the petitioner?

2. Whether the petitioner is entitled for compensation? If so, to what amount?

3. To what relief?"

5. The claimant examined himself as P.W.1 and also examined two other witnesses besides marking Exs.A.1 to A.13. The respondents did not adduce any oral evidence, but marked Ex.B.1-insurance policy.

6. On the basis of oral and documentary evidence, the Tribunal came to the conclusion that the claimant received injuries due to rash and negligent driving of driver of the Tata Sumo, but since the claimant also contributed to the accident, apportionment was permitted at 70:30 between the Tata Sumo vehicle and the petitioner.

7. The petitioner claimed total compensation of Rs.3,50,000/- under different heads. P.W.2, is the Doctor, who was examined on commission, stated that he was working as consultant orthopedic Surgeon in Vijaya Health Centre, Chennai, and the claimant was admitted in his hospital on 05.07.2001 and he sustained compound fracture of lower tibia and fracture of lower third of fibula and fractures of distal phalymx of left little finger with skin less. He further stated that left lower limb is shortened by 3/4th inch and that the claimant is suffering from permanent disability to an extent of 30%. But, during cross-examination, he stated that he did not issue any disability certificate.

8. The Tribunal noticed that as per the Manual for evaluation of permanent physical impairment for Orthopedic Surgeon by Americal Academy of Orthopedic Surgeon, it is clear that one inch shortening of limb is equivalent to 10% disability. As per the evidence of P.W.2, the

left limb of the claimant was shortened to an extent of 30% and accordingly, the percentage of disability assessed by P.W.2 was not believed. The claimant was stated to be working as RTC bus conductor at the time of accident and he was continuing in the same post and getting the same salary. Thus, the claimant did not incur any monetary loss. But, the Tribunal noticed that he was on loss of pay during the period from 08.08.2001 to 14.03.2002 and awarded an amount of Rs.50,862/- for loss of income for seven (07) months for the injuries sustained by him. The Tribunal awarded Rs.15,000/- for three grievous injuries and Rs.3,000/- for three simple injuries. Thus, an amount of Rs.18,000/- was awarded towards injuries. Though the claimant claimed an amount of Rs.1,00,000/- towards medical expenses, based on the medical bills furnished, the Tribunal awarded an amount of Rs.60,000/- towards medical expenses. Based on Ex.A.10, a sum of Rs.15,000/- was awarded towards transportation charges. Apart from other amounts, an amount of Rs.10,000/- was claimed by the claimant for damage to the vehicle and in view of bills produced, an amount of Rs.632/- was awarded as per Ex.A.7. Though the total amount was assessed at Rs.1,44,494/-, in view 70% contributory negligence given to the vehicle of the Tata Sumo, 30% was deducted and the amount came to Rs.1,01,145/-.

9. After perusal of the order of the Tribunal, this Court feels that the compensation awarded by the Tribunal is just and proper in the circumstances of the case. Therefore, this Court sees no grounds to enhance the said amount.

10. Accordingly, the appeal is dismissed confirming the order, dated 16.07.2004 in M.V.O.P.No.350 of 2001 by the Chairman, Motor

Accidents Claims Tribunal-cum-V Additional District Judge, Chittoor at Tirupati. Miscellaneous petitions, if any, pending in this appeal shall stand closed. There shall be no order as to costs.

A.RAMALINGESWARA RAO, J

MARCH 22, 2018

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Date:22.03.2018

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