

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO
CIVIL MISCELLANOE APPEAL No.2842 of 2004

JUDGMENT:

The appellant is the claimant in O.P.No.2750 of 2001 on the file of IV Additional Chief Judge-cum-Motor Accidents Claims Tribunal, City Civil Court, Hyderabad. He filed the claim petition claiming an amount of Rs.2,00,000/- for the injuries received by him in a motor accident that occurred on 27.10.2001. While he was going on his Luna bearing No.AEX-4104 towards Shamshabad Village, when he reached the mission compound cross road, the Auto bearing No.AP-9W-673 came in opposite direction and hit the Luna, as a result of such accident, he sustained injuries.

2. The 1st respondent remained *ex parte* and the 2nd respondent opposed the claim petition and he was permitted to take all defences available to the 1st respondent.

3. On the basis of above pleadings, the Tribunal framed the following issues:

- i. Whether the petitioner sustained injuries in the motor accident that took place on 27.10.2001 at about 12.30 noon near Mission compound cross roads, Shamshabad due to rash and negligent driving of the driver of the Auto bearing No.AP-9-W-673?
- ii. Whether the petitioner is entitled to compensation. If so to what amount and from whom?
- iii. To what relief?"

4. The petitioner was examined as P.W.1 and examined another witness as P.W.2 and marked Exs.A.1 to A.9. The 2nd respondent marked Ex.B.1-policy.

5. The Tribunal, on the basis of oral and documentary evidence, came to the conclusion that the accident occurred due to rash and negligent driving of driver of Auto bearing No.AP-9W-673 and awarded compensation of Rs.1,05,100/- along with interest at 9% per annum by its order, dated 16.10.2003. Challenging the quantum, the present appeal is filed.

6. It is the case of the appellant that immediately after the accident, he was shifted to Smt.Bhagwan Devi Hospital for treatment where he was inpatient from 27.10.2001 to 15.11.2001. He submits that surgery took place for fracture of both bones of right leg and he was again admitted as inpatient in the said hospital from 17.10.2002 to 28.10.2002. Another surgery was performed on him and bone grafting and re-nailing was also done. Ex.A.3 is the certified copy of injury certificate issued by the said hospital. As per the said certificate, the appellant sustained fracture to his both bones of right leg. Exs.A.4 to A.6 are discharge summaries issued by the hospital. P.W.2, who is an Orthopedic Surgeon, deposed with regard to admission of the appellant and performance of surgery. The appellant was doing business and earning Rs.3,000/- per month. The Tribunal took the monthly income of the appellant at Rs.1,500/- and applying the multiplier '13' for his age of 50 years and taking the disability as 15%, arrived at an amount of Rs.35,100/-. The appellant was awarded an amount of Rs.10,000/- each towards pain and suffering and loss of amenities. As against medical bills of Rs.77,499.40 ps, an amount of Rs.50,000/- was awarded. Thus, total an amount of Rs.1,05,100/- was awarded to the appellant.

7. Learned counsel for the appellant submits that the Tribunal has taken the monthly income of the appellant at Rs.1,500/-, who is a businessman, which is grossly inadequate and deduction in respect of medical bills was also improper.

8. Since the appellant was aged about 50 years and has considerable experience in business, his monthly income should have been taken as Rs.2,000/- and applying the multiplier '13' for his age of 50 years and taking the disability as 15%, the loss of future earnings comes to Rs.46,800/-. Since, no amount was awarded for hospitalization period of the appellant, this Court feels that for two spells, if an amount of Rs.25,500/- is awarded, it would meet the ends of justice. The amount already awarded towards pain and suffering and loss of amenities shall remain unaltered. Since this Court feels that the deduction towards medical bills is not proper, an amount of Rs.70,000/- was awarded in the place of Rs.50,000/-. Thus, total an amount of Rs.1,42,300/- is awarded in the place of Rs.1,05,100/- already awarded by the Tribunal. Thus, the compensation is enhanced to Rs.1,42,300/- and the interest on the enhanced compensation shall carry the same rate of interest at 9% per annum from the date of petition till realization.

9. Accordingly, the appeal is partly allowed. 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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CIVIL MISCELLANEOUS APPEAL No.2842 of 2004

Date:22.03.2018

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