

HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A. No. 2380 of 2011

ORDER:

The appellant-claimant filed this appeal against the Award dated 18.08.2011 passed in MVOP.No.501 of 2008 by the Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, Medak at Sangareddy granting compensation of Rs.77,000/- with costs and interest at the rate of 8% p.a. against the claim of Rs.5,00,000/- for the injuries sustained by him in the motor accident occurred on 17.04.2008.

2. The brief facts of the case are that on the date of accident, appellant-injured was traveling in NEKRTC bus bearing No. KA38F-301 of Bhalki Depot plying from Hyderabad to Bidar and when the said bus reached near Excise check post of Karnataka-Andhra Pradesh Border, a tipper vehicle bearing No.AP 12 V 0576 came in a rash and negligent manner and dashed against the bus due to which the appellant and other passengers sustained injuries. The appellant sustained wound on chin, lacerated wound on inner side of bone of lower lip, loosening of lower 14 teeth and his face was disfigured and immediately, he was shifted to Government Hospital, Bidar and

later to Mythri Hospital, Hyderabad and he incurred an amount of Rs.1,00,000/- towards his treatment. It is stated that at the time of accident, appellant used to earn a monthly income of Rs.30,000/- by working as Designing Engineer in Infotech Kukatpally and due to the accident, he lost his income and hence, he filed the claim petition before the tribunal under Section 166 of the Motor Vehicles Act seeking compensation of Rs.5,00,000/- payable by respondents jointly and severally.

3. Before the tribunal, respondent No.1 was set ex-parte. Respondent Nos.2 and 3 (Insurance company and NEKRTC) filed separate counters.

4. Respondent No.2, insurer of tipper, filed counter denying the averments of the claim petition particularly, negligence driving of its driver. Further, respondent No.2-Bus was not insured with its company and hence, insurance company is not liable to pay compensation as claimed by the appellant.

5. On the other hand, respondent No.3 pleaded that the alleged accident occurred due to rash and negligent driving of

the driver of tipper and not due to negligence of the driver of NEKRTC bus.

6. Based on the above pleadings, the tribunal framed the following issues for consideration.

1. *Whether the accident occurred due to rash and negligent driving of the driver of the crime vehicle ?*
2. *Whether the petitioner is entitled for compensation as prayed for, if so, at what amount and from whom ?*
3. *To what relief ?*

7. During trial, on behalf of appellant-injured, P.Ws.1 and 2 were examined and documents, Exs.A1 to A9 were marked. On behalf of respondent No.3, R.Ws 1 and 2 were examined and documents Exs.B1 to B3 and Exs.C1 and C2 were marked.

8. The tribunal, based on the evidence of P.W.1-injured coupled with documentary evidence, Exs.A1, A2 and A4-certified copies of FIR, Charge Sheet and scene of offence panchanama respectively, held that the accident occurred due to rash and negligent driving of the driver of the offending tipper and answered Issue No.1 in favour of appellant-injured. In the opinion of this Court, the findings of the tribunal could not be

found fault with as there is no contrary evidence available on record.

9. As regards awarding compensation to the appellant is concerned, P.W.2, Consultant Oral and Maxilla Facial Surgeon and who treated the appellant-injured deposed that the appellant was admitted on 18.04.2008 and discharged on 21.4.2008 in Mythri Hospital and during treatment, appellant was found to have trauma to the teeth and blunt soft tissue injury and the lower teeth were found to have been fractured and became mobile; he was taken up for surgery by Arch Bar placement, removal of fracture teeth and splinting of mobile teeth and suturing of soft tissue injury and for his treatment, as per Ex.A5, appellant spent an amount of Rs.22,995/-. The tribunal, basing on Ex.A5 granted Rs.22,995/- under the head of medical expenditure; Rs.15,000/- under the head of pain and suffering; Rs.2,000/- under the head of incidental charges towards transportation.

The tribunal, basing on Ex.A8 salary certificate of appellant, which shows that at the time of accident, he was getting a monthly salary of Rs.26,670/- and considering nature

of injuries sustained by him, thought that appellant could not have attended job for a month and thereby awarded one month salary (i.e., Rs.26,670/-) under the head of loss of earnings.

So far as disability aspect is concerned, though P.W.2-Doctor stated that appellant sustained disability of 55% to 60%, but there is no supporting documentary evidence and hence, the tribunal came to the conclusion that the said disability would not affect the avocation of appellant and hence granted Rs.10,000/- under the head of loss of future amenities. In total, the tribunal awarded compensation of Rs.76,665/-, rounded off to Rs.77,000/-, to the appellant payable by respondent Nos.1 and 2 jointly and severally.

Being aggrieved by the same, the appellant-claimant filed this appeal seeking enhancement of compensation on the ground that the tribunal has grossly erred in not granting any amount towards extra nourishment and the amounts awarded under the heads of incidental charges and pain and suffering are very meager. Further, the tribunal ought to have awarded total compensation as claimed considering the fact that P.W.2's

evidence is sufficient to prove the disability of 55% to 60% sustained by appellant.

In the facts and circumstances of the case, taking into consideration of loss of teeth besides serious injuries sustained by appellant in the accident, this Court opined that the tribunal ought to have granted the amount under the head of extra nourishment. Hence, this court grants an amount of Rs.15,000/- under the head of extra nourishment.

In the accident, as per evidence of P.W.2, appellant lost 14 teeth due to grievous injuries sustained in the accident and he took treatment in Mythri hospital. At the time of arguments, learned counsel for appellant states that appellant lost 17 teeth in the accident, but no amount was granted under the head of grievous injuries. In view of the above submission, this court found that it is just and necessary to grant some amount for grievous injuries i.e., for loss of 17 teeth and for replacing the same by the artificial teeth and thereby, a sum of Rs.25,000/- is granted.

The aspect of disability of 55 % to 60% alleged to have been sustained by appellant is concerned, as there is no

documentary proof on record, the tribunal has rightly rejected the claim of appellant under the head of disability.

Since it is the case of grievous injuries sustained by appellant, he might have gone to hospital frequently for check up and consultation purpose for which, he might have incurred an amount of Rs.10,000/- to Rs.15,000/- towards transport charges. Hence, an amount of Rs.10,000/- is granted under the head of transport charges.

Therefore, appellant is entitled for Rs.15,000/- under the head of extra nourishment; Rs.10,000/- under the head of transport charges and Rs.25,000/- under the head of grievous injuries. In all a total amount of Rs.50,000/- is awarded to appellant in addition to the compensation amount of Rs.77,000/- as already granted by the tribunal. The respondent Nos.1 & 2 are jointly and severally liable to pay the total compensation amount of Rs.1,27,000/- (Rs.77,000/- + 50,000/-) to the appellant along with interest at the rate of 8% as awarded by the tribunal, within a period of one month from the date of receipt of a copy of the order, failing which, the entire compensation amount shall carry interest at the rate of 9% per

annum from the date of filing of the petition till the date of realization. The amount already deposited by the respondent No.2, if any, shall be given credit. On such deposit, appellant is at liberty to withdraw the entire compensation amount of Rs.1,27,000/- with proportionate costs and interest.

With the above observations, the civil miscellaneous appeal is allowed in part to the extent indicated above. No costs.

Miscellaneous petitions if any pending, shall stand closed.

02.11.2018
MjI/*



JUSTICE M.GANGA RAO