

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

M.A.C.M.A.NO.1284 OF 2012

JUDGMENT:-

Heard Sri G.Rama Gopal, learned counsel for the appellant/claimant and Sri Kota Subba Rao, learned Standing Counsel for the 3rd respondent-Insurance Company.

2. This appeal is filed questioning the order, dated 13-05-2010 in M.O.P.No.251 of 2009 passed by the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Visakhapatnam.

3. Being dissatisfied with the quantum of compensation granted by the court below, the claimant has filed the present appeal.

4. The essential grievance of the appellant before this court is that as a sum of Rs.1,00,000/- was claimed for the grievous injury sustained by him, only a sum of Rs.30,000/- was awarded. The learned counsel for the appellant contends that the evidence of PW.2, who is Doctor and the supporting medical evidence was not at all considered in this case. It is his contention that amounts awarded are meager and disallowing a substantial part of the claim is not at all correct.

5. In reply thereto, Sri Kota Subba Rao, learned Standing Counsel for the 3rd respondent-Insurance Company points out that the judgment and decree is a reasoned judgment showing application of mind. He points out that under the head of 'general damages', a sum of Rs.10,000/- was claimed towards compensation for pain and suffering and the court below awarded a sum of Rs.20,000/-. Similarly, a sum of Rs.20,000/- was claimed towards permanent disability and the court below thought it fit to award a sum of Rs.10,000/-. He also points out that the medical bills were not allowed by the lower court on the ground that they are not validly proved while relying upon a decision of this court in *United India Insurance Company Ltd., vs. Mohammad Khaj Rasool Sayyed and another*⁽¹⁾. Therefore, the contention of the learned Standing Counsel for the 3rd respondent is that the judgment and decree passed by the court below is correct and valid and that there are no grounds to interfere with the findings.

6. The first and foremost ground that is urged by the learned counsel for the appellant is that the medical bills were not considered at all and they were negatived. This court notices that a bunch of medical bills were sought to be marked through PW.1. When a suggestion was put to

¹ 2003(5) ALD 162

PW.1 that the bills are created for the purpose of the case, as the genuineness of the bills was questioned by the respondent, the petitioner had not summoned somebody involved with the preparation of the medical bills to prove the contents of the same. A Judgment in *United India Insurance Company Ltd.,(supra)* was referred to in the judgment of the lower court to the effect that there is no distinction between medical evidence and other evidence and any document produced by any party is required to be proved as per the provisions of the Indian Evidence Act,1872 and that mere marking of the document is not the proof of the contents of the said document. This was also settled law on the subject. Therefore, this court finds no grounds to interfere with the finding on the same.

7. Coming to the next aspect of 'general damages', as rightly pointed out by the learned Standing Counsel for the 3rd respondent-Insurance Company, a sum of Rs.10,000/- was claimed towards 'pain and suffering' and the court below awarded a sum of Rs.20,000/-. In addition, there is a claim of Rs.20,000/- towards 'permanent disability'. PW.2 is the Doctor who was examined in this case and in his evidence he merely stated that the disability is 40%, which is partial and permanent, but he stated that the injured/appellant will have a difficulty in lifting the weights due to fracture. He did not depose that the petitioner had

sustained an injury which would incapacitate him from carrying out his duties as an Auto driver. This court is also of the opinion that the damages that are awarded @ Rs.10,000/- are correct. The learned counsel for the appellant also argues that PW.2 deposed that the injured/appellant may need for another surgery and that this aspect was not considered by the court below. The deposition of PW.2 is to the effect that he has advised the injured/appellant to go for another surgery but he did not depose that after second surgery, the petitioner would be incapacitated totally. In addition, this court also noticed that this aspect of requirement of second surgery was considered by the court below in para.17 of the impugned judgment wherein although a sum of Rs.10,000/- was claimed, a sum of RS.20,000/- was awarded over and above what is claimed. While awarding this amount, the court below also considered the fact that claim of Rs.10,000/- made by the appellant is inadequate and that as the petitioner has to undergo for another surgery, the amount was enhanced to Rs.20,000/-. In this view of the matter, this court is of the opinion that the impugned judgment does not suffer from any infirmity *per se* warranting interference by this court at this stage. Therefore, the appeal is liable to be dismissed.

Accordingly, the Appeal is dismissed. No costs.
Miscellaneous Petitions pending, if any, shall stand closed in
consequence.

29-10-2018
TSNR

D.V.S.S.SOMAYAJULU,J

