

THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A.No.285 OF 2011

JUDGMENT:

Appellant-claimant-injured filed this appeal against the order and decree dated 06.04.2005 passed in O.P.No.600 of 1998 by the Chairman, Motor Accidents Claims Tribunal (I Additional District Judge), Khammam, granting compensation of Rs.50,500/- as against the claim of Rs.1,25,000/- for the injuries sustained by him in the accident occurred on 05.12.1996.

The appellant-claimant filed claim petition under Section 166 of the Motor Vehicles Act alleging that on 05.12.1996, when the appellant was proceeding to Garla along with one Gopala Krishna Murthy in a jeep bearing No.AP-36-T-7626 being driven by the first respondent herein and when the jeep reached Kothalingala bus-stage, the driver i.e.R-1 drove the jeep in a rash and negligent manner, lost control over the vehicle, due to which the jeep turned turtle resulting in grievous injuries to the appellant and his co-passenger Krishna Murthy. A case in crime No.282/1996 was registered by Kamepally Police for the offence punishable under Section 337 of Indian Penal Code. It was further alleged that the appellant used to earn Rs.2,500/- per month by working in TTD Kalyanamandapam, Khammam, due to injuries, he was bed ridden for six months, lost earnings during the said period and he also suffered permanent disability. Thus, he claimed compensation of Rs.1,25,000/- towards general and special damages from respondents 1 to 3, being the driver, owner and insurer of the offending jeep.

Respondents 1 and 2 remained ex parte before the Tribunal.

Respondent No.3 filed a counter affidavit and also additional counter affidavit denying the material averments of the claim petition and specifically contending that R.1 was not having valid driving license to drive the offending jeep since he was authorized to drive only LMV – non-transport vehicle. Further, the particulars of accident were not informed to their office. Thus, there was violation of terms and conditions of the Policy. Hence, they are not liable to pay compensation.

Based on the above pleadings, the Tribunal framed the following issues for its consideration:

- 1) Whether the petitioner sustained injuries due to rash and negligent driving of the Mahindra jeep bearing No.AP-36-T-7626 by its driver/R.1?
- 2) Whether the petitioner is entitled to any Compensation? If so, to what amount and from which of the respondents?
- 3) To what relief?

On behalf of the appellant-claimant, PWs 1 and 2 were examined and Exs.A.1 to A.10 were got marked. On behalf of the 3rd respondent-Insurance Company, R.W.1 was examined and Exs.B.1 and B.2 were got marked.

The Tribunal based on the evidence available on record, more particularly the evidence of PW-1-injured coupled with the evidence of Exs.A.1 to A.3, came to the conclusion that the driver of the offending jeep drove it in a rash and negligent manner, due to which, the jeep turned turtle at Kothalingala Village, resulting in injuries to the appellant and other inmates of the jeep.

As regards quantum of compensation, the Tribunal based on the evidence of P.W.1-injured and P.W.2-Doctor, who treated the injured, granted Rs.35,000/- for the injuries, Rs.2,500/- towards pain and suffering, Rs.10,000/- towards medical expenses and

Rs.3,000/- towards loss of earnings, in all, Rs.50,500/- along with costs and interest @ 9% per annum payable by respondents jointly and severally. Aggrieved by the quantum of compensation, the present appeal came to be filed.

Learned counsel for the appellant would contend that the Tribunal grossly erred in disbelieving the monthly income of the injured and due to the injuries sustained by him in the accident, he could not attend the job for six months and lost income during the said period. The Tribunal granted very meagre amount of Rs.25,000/- towards pain and suffering. Further, the Tribunal ought to have granted some compensation towards mental agony suffered by the appellant.

Per contra, learned counsel for the respondent-Insurance Company would contend that the Tribunal based on the evidence available on record, granted just and fair compensation and the same needs no interference by this Court.

Ex.A.3-Wound Certificate issued by the Medical Officer, Government Hospital, Khammam, clearly establishes that the appellant has suffered (1) laceration over face (2) laceration over forehead (3) pain and depression on bridge of nose and (4) pain swelling on right side face, out of which injury Nos.3 and 4 are grievous in nature. The Tribunal having held that the investigation revealed that the injured sustained the injuries as mentioned in Ex.A.3, failed to grant any amount towards grievous injuries. Hence, this Court is of the view that it would be just and proper to grant a sum of Rs.5,000/- each for two grievous injuries sustained by the appellant, as evident from Ex.A.3.

Further, it appears from the evidence available on record that the appellant took treatment initially in Government Hospital,

Khammam, and thereafter he was shifted to Osmania General Hospital, Hyderabad, where he was treated for three months, which reveal that he suffered mental agony, pain and suffering. But, the Tribunal has granted a very meagre amount of Rs.2,500/- towards pain and suffering, which can be enhanced to Rs.15,000/- and accordingly enhanced. Though the Tribunal has granted Rs.3,000/- towards loss of earnings @ Rs.1,500/- per month for two months, it is seen from the record that the injured lost earnings for a period of six months. Hence, the compensation granted by the Tribunal of Rs.3,000/- towards loss of earnings is enhanced to Rs.9,000/-, to meet the ends of justice. Therefore, the compensation granted by the Tribunal of Rs.50,500/- is hereby enhanced to Rs.79,000/-.

Accordingly, the appeal is allowed in part enhancing the compensation granted by the Tribunal to Rs.79,000/- payable by the respondents jointly and severally along with costs and interest @ 9% per annum from the date of petition till the date of realization. Entire compensation amount shall be deposited to the credit of the O.P. before the Tribunal, after deducting the amounts already deposited, within a period of two months from the date of receipt of a copy of this order. On such deposit, the appellant can withdraw the same.

Miscellaneous petitions pending in this appeal, if any, shall stand closed. There shall be no order as to costs.

(M.GANGA RAO, J)

02.11.2018
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