

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No.302 of 2012

JUDGMENT :

This Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for brevity "the Act"), is preferred by the appellant-petitioner seeking enhancement of compensation, challenging the Award and decree dated 12.11.2010 in O.P.No.780 of 2007 passed by the Chairman, Motor Accidents Claims Tribunal (District Judge), Nalgonda (for brevity "the Tribunal"), awarding compensation of Rs.2,50,350/- as against the claim of Rs.10,00,000/- laid by him under Section 166 r/w. Section 163-A of the Act, for the injuries sustained by him in a motor accident that occurred on 21.12.2006.

2. Appellant is the petitioner, respondent No.1 is the owner of the Tata Indica Car bearing No.AP-25V-1936 and respondent No.2 – New India Assurance Company Limited is its insurer. For the sake of convenience, the parties are referred to as they were arrayed in O.P.No.780 of 2007 before the Tribunal.

3. The brief facts of the case are that, on 21.12.2006 the petitioner along with his relatives left Venkatapuram in a Tata Indica Car bearing No.AP-25V-1936 to go to Tirupati and when the Car reached the outskirts of Nellore Town and after

passing Narayana Engineering College, the driver of the Car drove it in a rash and negligent manner with high speed and tried to overtake a lorry and dashed to the said lorry, due to which the petitioner along with the inmates of the car received grievous injuries and they were shifted to Bollineni Ramanaiah Memorial Hospital Private Limited, Nellore. The police of Nellore Rural Police Station registered a case in Crime No.332/2006 against the driver of the offending car. The petitioner was treated as an inpatient for one month and he was in coma for about a week and took treatment at Hyderabad. The petitioner has filed the aforesaid claim petition against respondent Nos.1 and 2, who are owner and insurer, respectively, of the offending car claiming compensation of Rs.10,00,000/- on account of the injuries sustained by him in the said accident. The 1st respondent-owner filed his counter admitting that he is the owner of the offending car and that the said car was insured with the 2nd respondent – insurer and the policy was in force by the date of accident. However, he denied the averment that the accident occurred due to the rash and negligent driving by the driver of the car and also about receipt of grievous injuries by the petitioner in the said accident. The 2nd respondent – insurer filed its counter denying the age, occupation and income of the petitioner and also specifically denied that the driver of the offending car was having valid and subsisting driving licence at the time of accident and that

the compensation claimed by the petitioner is highly excessive and hence sought for dismissal of the petition.

4. On consideration of the evidence of witnesses P.Ws.1 and 2 and the documentary evidence under Exs.A.1 to A.12 adduced on behalf of the petitioner, and the evidence of RW.1 and documentary evidence under Ex.B.1 – Copy of Insurance Policy adduced on behalf of the 2nd respondent - insurer, by Award and decree dated 12.11.2010, the Tribunal has partly allowed the petition awarding compensation of Rs.2,50,350/- under various heads with interest @ 7.5% per annum from the date of the petition till realization against the respondent Nos.1 and 2 jointly and severally. Having dissatisfied with the amount of compensation awarded by the Tribunal, the appellant-petitioner has preferred the present appeal seeking enhancement of compensation.

5. Heard Sri G. Chandrasekhar Reddy, learned counsel for the appellant-petitioner. None appeared for the 2nd respondent – insurer. Perused the Award under challenge and also the evidence on record.

6. Learned counsel for the appellant-petitioner mainly contended that the compensation awarded by the Tribunal is very meager and that the Tribunal has not considered Ex.A.10 – Original Disability Certificate issued by Dr. A.V. Ramana Murthy; Ex.A.11 – Medical Certificate issued by

Bollineni Hospital, Nellore; and Ex.A.12 – Original Disability Certificate in proper perspective. It is also contended that the Tribunal has not awarded any amount towards the disability sustained by the petitioner nor it has discussed the evidence of PW.2 – Medical Officer in the light of the documents produced under Exs.A.10 to A.12, which show that the petitioner has suffered 50% of eye vision. Therefore, learned counsel for the appellant-petitioner requested to remand the matter to the Tribunal to adjudicate the matter in the light of the evidence adduced on behalf of the appellant-petitioner to prove the disability sustained by him in the accident and also for a direction to the Tribunal to decide the disability suffered by the petitioner basing on the documents under Exs.A.10 to A.12 and award a just compensation.

7. In the light of the arguments advanced by the learned counsel for the appellant-petitioner and also on perusal of the evidence on record, it is obvious that in the alleged accident, the petitioner has sustained grievous injuries and suffered disability, which was discussed in paras-9 and 12 of the Award, as follows:

“9. Coming to the injuries sustained by the petitioner, PW.2 is the doctor treated the petitioner in BRM Super Specialty Hospital, Nellore. According to him on 22.12.2006 he examined the petitioner, who suffered with multiple injuries, and all the injuries are mentioned in the wound certificate Ex.A.2, are grievous in nature and the petitioner underwent surgeries by Orthopedic Surgeons Dr.Vijayanand & Dr. Balakondaiah and also

seen by the ENT Surgeon, Neuro-physician and Ophthalmologist. PW.2 identified Ex.A.2 wound certificate, Ex.A.3 Discharge Summary, A.8 bunch of medical bills, Ex.A.9 Out-patient card issued by their Hospital. PW.2 further stated that he treated the petitioner for brain injury and on 19.01.2007 the petitioner was discharged from their hospital with an advice for follow-up treatment. In the cross-examination PW.2 stated that he issued disability certificate on 4.11.2008 under Ex.A.10.

10 and 11

12. Coming to the disability suffered by the petitioner, PW.2 doctor stated that the petitioner suffered disability. In this case, petitioner filed Ex.A.12, disability certificate but not examined the person, who issued the same. Therefore, Ex.A.12 disability certificate is not proved but the fact remains that due to the injuries the petitioner must have suffered some disability. Therefore, an amount of Rs.30,000/- is awarded towards the inconvenience caused to the petitioner due to the injuries. Thus in total the petitioner is entitled for Rs.2,50,350/-."

8. The Tribunal has awarded compensation only towards pain and suffering for 4 grievous injuries @ Rs.15,000/- each. For loss of amenities, the Tribunal has granted Rs.30,000/-, however, it has not considered the disability suffered by the petitioner. PW.2 - Medical Officer, who is an Ophthalmologist, who issued Ex.A.11, has not been examined in this case to prove the disability suffered by the petitioner.

9. In view of the above, since the Motor Vehicles Act is a beneficial Legislation, I deem it appropriate to remand the matter to the Tribunal for fresh disposal for awarding

compensation in accordance with law, after giving an opportunity to the petitioner to produce evidence by recalling the witnesses and also one of the Doctors from the Medical Board to prove Ex.A.11 – Medical Certificate and the disability sustained by him in the accident. The findings recorded by the Tribunal on other aspects do not require any interference.

10. With the above direction, this Civil Miscellaneous Appeal is disposed of. No order as to costs.

11. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

19.01.2018.
Msr

GUDISEVA SHYAM PRASAD, J

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19.01.2018
Msr