

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.1555 OF 2006

JUDGMENT:

This appeal is filed by the appellant-claimant aggrieved by the Order and Decree dated 06.10.2005 passed in O.P.No.578 of 2001 by the III Additional District & Sessions Judge (Fast Track Court), at Medak (for short, the Court below).

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Court below in the original petition.

3. The brief facts of the case are that on 16.07.2001 the claimant and others were going to Shankarampet Village on a motorcycle to purchase Text books at Shankarampet from Alladurg, at a normal speed. When the motorcycle reached within the village limits of Kadidampally on the correct side of the road, the jeep bearing No.MH.26-C-355 came from Shankarampet side towards Hyderabad in high speed and in rash and negligent manner and dashed the motorcycle, due to which the motorcycle fell on the road, the claimant received injuries i.e., injuries on head, forehead, right leg, knee joint of right leg, right parietal region and all over the body and immediately he was shifted to Government Hospital for treatment, subsequently the claimant was taken to Gandhi Hospital, Secunderabad, for better treatment, where the claimant is still undergoing treatment. The accident occurred

due to rash and negligent driving of the driver of the jeep only. The claimant is aged about 19 years and intelligent in his studies. Due to the accident, the claimant lost one year education. Hence, the claimant filed the claim petition claiming compensation of Rs.90,000/-, payable by both the respondents, being the owner and insurer of the offending jeep.

4. Before the Court below, the 1st respondent remained *ex parte*. The 2nd respondent filed its counter denying the averments of the claim petition and contended that the amount claimed is excessive and prayed to dismiss the claim petition.

5. After considering the oral evidence of P.Ws.1 & 2 and the documentary evidence of Exs.A-1 to A-8 & Ex.B-1, the Court below has dismissed the claim petition by observing that the claimant failed to prove the rash and negligent driving of the driver of the crime vehicle at the time of accident and that the claimant also failed to show proof that driver of motorcycle had valid driving licence at the time of the accident and that the motorcycle also got damaged in the accident. Aggrieved by the said order, the appellant/claimant filed the present appeal, seeking compensation.

6. Heard.

7. The Court below presumed that the claimant/injured, who is a pillion rider might have also consumed alcohol along with the driver of the motorcycle. As per Ex.A-4-Medical

Certificate, wherein the doctor who has treated the driver of the motorcycle indicated that there was an alcoholic smell at the time of taking breath by the driver. There was violation of the traffic rules by way of triple riding and thus, the claim petition has been dismissed by the Court below.

8. Admittedly, the accident has taken place and the offending jeep is insured with the 2nd respondent/insurance company and the accident took place during the insurance period. The claimant is a pillion rider and no test of breath analysis or presence of alcohol in the blood has been tested either for the driver of the motorcycle or to the others. Even for a minute, if it is assumed that the claimant was under the hands of alcohol, he was only pillion rider and there is no contribution for causing rash and negligent driving by the claimant. Insofar as the violation of traffic rules by triple riding is concerned, there is no evidence placed before the Court below, but for the triple riding, the accident has taken place. In the event of violation of any traffic rules, the penal provisions are different and they will not come in the way of awarding of compensation under the Motor Vehicles Act, 1988. Insofar as the driver driving the motorcycle without licence is concerned, it was only the case where the licence was not produced, but there is nothing on record to place that the driver of the motorcycle was a minor and no licence has been issued by the RTA authorities. Accordingly, this Court feels that the claimant is entitled to claim compensation.

9. Now coming to the aspect of determining the compensation for the injuries sustained by the claimant i.e., head injury, forehead, right leg, knee joint of right leg, right parietal region, except the head injury, all other injuries are simple in nature and the head injury is considered to be grievous in view of the claimant being hospitalized for a period of 15 days i.e., he was admitted on 16.07.2001 in Gandhi Hospital and discharged on 01.08.2001, and was under unconscious state of mind. Though the claimant was treated in Gandhi Hospital, in the light of the evidence of P.W.1 and Ex.A-6-Medical Bills No.10 for Rs.1,760/-, the medicines which were not available in Gandhi Hospital, were purchased by the claimant from outside. Accordingly, Rs.1,760/- towards medical bills is considered as genuine. Therefore, this Court feels that it would be just and proper if Rs.1,760/- is awarded to the claimant under the head of Medical expenses. With regard to attendant charges is concerned, since the claimant was hospitalized for a period of 15 days, Rs.100/- per day can be granted to be claimant. Therefore, the amount awarded under the head of Attendant charges is Rs.1,500/- (Rs.100/- x 15 days). The claimant being a student could not pursue his academics for a period of one year and this Court feels that it would be just and appropriate if an amount of Rs.10,000/- is granted towards fee for one year. Further, this Court feels that it would be just and necessary to grant amount of Rs.10,000/- towards pain & suffering for the grievous head injury,

Rs.10,000/- towards pain & suffering for simple injuries, Rs.3,000/- towards extra nourishment and Rs.2,000/- towards transportation, which includes subsequent visits and check-ups in the hospital after the discharge. Hence, the total compensation under various heads is as follows:

Sl.No.	Name of Head	Awarded by this Court
01.	Medical Expenses	Rs.1,760/-
02.	Attendant charges	Rs.1,500/-
03.	Fee for one year	Rs.10,000/-
04.	Pain & suffering for one grievous injury	Rs.10,000/-
05.	Pain & suffering for simple injuries	Rs.10,000/-
06.	Extra Nourishment	Rs.3,000/-
07.	Transportation charges	Rs.2,000/-
TOTAL		Rs.38,260/-

10. In the result, the Motor Accident Civil Miscellaneous Appeal is allowed by granting compensation of Rs.38,260/- with interest @ 7.5% per annum from the date of petition till the date of realization, payable by both the respondents jointly and severally. The respondents are directed to deposit the compensation amount along with proportionate costs and interest within two (02) months from the date of receipt of a copy of this order. On such deposit, the appellant is permitted to withdraw the entire amount. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 28th October, 2019
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