THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A.No.2787 of 2005

JUDGMENT:

Appellant-claimant filed this appeal against the award dated 15.07.2005 passed in O.P.No.953 of 2003 by the Chairman, Motor Accidents Claims Tribunal (V Additional District Judge), at Nizamabad, whereby and whereunder the Tribunal dismissed the claim petition filed by the appellant under Section 166 (1) (a) of Motor Vehicle Act, 1988, claiming compensation of Rs.2,00,000/- with future interest @ 24% per annum on account of the injuries sustained by him in the motor vehicle accident occurred on 04.04.2003.

2. Brief facts of the case are that on 04.04.2003 at about 9.30 p.m. while the appellant was proceeding from Jankampet to Nehrunagar along with his friend by walk and while crossing the road near the pond, the offending vehicle i.e. Hero Honda motor cycle bearing No.AP-25-H-2083 came in a rash and negligent manner with high speed from Bodhan side and dashed against the appellant and his friend causing several injuries. After the accident, appellant was shifted to Government Headquarters Hospital, Nizamabad, where he was treated. Alleging that due to the injuries sustained by him, the appellant suffered permanent disability, claim petition has been filed seeking compensation of Rs.2,00,000/-.

3. Respondent-Insurance Company filed counter before the Tribunal denying the manner of accident, rash and negligent driving of the driver of the crime vehicle, age & income of the injured, treatment taken by him, disability suffered and loss of future income, etc. Thus, it prayed to dismiss the claim petition.

4. Basing on the above pleadings, the Tribunal framed the following issues for its consideration:

1) Whether the accident was due to rash and negligent driving of the Hero Honda bearing No.AP-25-H-2083 by its driver?

2) Whether the petitioner is entitled for compensation? If so, to what amount and against which of the respondents?

3) To what relief?

5. On behalf of the claimant, PWs 1 and 2 were got examined and Exs.A.1 to A.20 were got marked. On behalf of respondents, no oral evidence was adduced, but copy of insurance policy got marked as Ex.B.1. After appreciating the entire evidence, both oral and documentary, available before it, the Tribunal held that the accident is not proved, there is inconsistency in the evidence of doctor-PW.2, Ex.A.3 issued by P.W.2 is silent about date of examination and the medical records of the Government Hospital are not placed on record and thereby the Tribunal suspected the veracity of the evidence of PWs 1 and 2 and thus dismissed the O.P. Aggrieved by the same, the present appeal is filed.

6. The contention of the learned counsel for the appellant is that since the accident has taken place, the priority of the claimant would be in attending to the hospital and getting treatment rather than going to Police Station and giving complaint. He placed reliance on ***Ravi vs. Badrinarayan***[1]. Further, the learned counsel basing upon the x-rays and medical prescriptions, sought enhancement of the compensation.

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[1] AIR 2011 SC 1226

7. On the other hand, Mr.Sunil Kumar, learned counsel for the respondent-Insurance Company, contended that the order passed by the Tribunal is just and proper and the same need not be interfered with and the appeal is liable to be dismissed since the accident has not been proved and none of the doctors who treated the injured in Government Hospital have been examined and there are discrepancies in the evidence and records.

8. Admittedly, as per Ex.A.1-FIR and Ex.A.2-Police Requisition, the accident has taken place, the owner of the crime vehicle was arrested and thereafter steps were taken under the Criminal Procedure Code. It is to be seen that, generally, no person would come forward before the Police Station, admit that he caused accident and injuries to a person and face the criminal trial. The contention of the insurance Company that for false gain, the vehicle is planted and the owner of the two wheeler is having nexus and accordingly he came forward admitting the accident, is a bald argument without any basis that too when no evidence was adduced by the respondent before the Tribunal to that effect. As per Ex.B.1, the vehicle is covered under Insurance Policy and the same is within the validity period.

9. For the above reasons, it is held that the accident was occurred by the offending vehicle causing injuries to the appellant-claimant and the offending vehicle is covered by the insurance policy under Ex.B.1.

10. Now the point for consideration before this Court is as to determination of compensation.

11. Admittedly, all the medical reports and the evidence of P.W.2 go to show that the claimant had a facial injury and also loss of tooth. Though the trial Court has disbelieved the evidence of Doctor-PW.2 and the medical reports placed before it, this Court finds that to some extent, the exhibits pertaining to medical examination placed by the appellant-claimant can be relied upon. Therefore, without going into the veracity of the medical reports, this Court feels that in view of the injuries sustained by the appellant-claimant awarding a sum of Rs.30,000/- towards compensation under all heads including injuries, pain and suffering and medical expenses would be just and proper.

12. Accordingly, the appeal is partly allowed granting compensation of Rs.30,000/- along 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 compensation shall be deposited to the credit of the O.P. before the Tribunal, within a period of two months from the date of receipt of copy of this order. On such deposit, the appellant-claimant is entitled to withdraw the same.

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

T. AMARNATH GOUD, J

11.09.2019
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