

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.183 OF 2006

JUDGMENT:

This appeal is filed by the appellant-2nd respondent/insurance company aggrieved by the Order and Decree dated 19.07.2005 passed in O.P.No.790 of 2000 by the Motor Accidents Claims Tribunal (District Judge), At Nizamabad (for short, the Tribunal).

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

3. The brief facts of the case are that on 04.03.2000, the petitioner along with his family members and relatives, who are all sweet vendors left from their village Dharpalli to sell sweets in Kanteshwar Jatara in Nizamabad. They reached Indalvai station and due to non-availability of buses, all of them proceeded to Dichpally by walk and at about 3.00 a.m. when they reached Tirmanpalli shivar in front of Indalvai old forest office on National High Way No.7, a van bearing No.AP-25/T-7936 which was coming from Dichpally side driven by its driver at high speed and in rash and negligent manner lost control over the vehicle due to which the van turned turtle and dashed the petitioner and others, who were walking by the side of the road. Due to which the petitioner received fracture injuries to both hands, injuries to chest, head and all

over the body. The petitioner was shifted to the Government Hospital, Dharpalli and on the advise of the doctor, he was referred to the Government Head Quarters Hospital, Nizamabad, for treatment. So far, the petitioner incurred Rs.30,000/- for his treatment. Still he is undergoing treatment with private doctors. The petitioner is a sweet vendor and earning Rs.4,000/- per month prior to the accident. But due to the fracture injuries to both hands, the petitioner is unable to do anything, unable to attend to his regular work and became dependent on others and got permanent disability. The accident took place due to the rash and negligent driving of the driver of the van. Hence, the petitioner filed the claim petition claiming compensation of Rs.5,00,000/-, payable by both the respondents, being the owner and insurer of the offending van.

4. Before the Tribunal, respondent No.1 did not choose to file written statement. Respondent No.2 filed its written statement 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.W.1 and the documentary evidence of Exs.A-1 to A-16 & Exs.X-1 & X-2, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the offending van and awarded total compensation of

Rs.1,57,000/- i.e., Rs.50,000/- towards disability, Rs.25,000/- towards pain & suffering, Rs.10,000/- towards medical expenses and Rs.72,000/- towards loss of earnings, with interest @ 9% per annum from the date of petition till the date of realization, payable by both the respondents. Aggrieved by the same, the appellant/2nd respondent/insurance company filed the present appeal.

6. Heard Sri T.Ramulu, learned standing counsel appearing for the appellant/2nd respondent/insurance company and Sri Y.S.Yellanand Gupta, learned counsel appearing for the 1st respondent/claimant. Perused the material record.

7. As per Ex.A-3-Wound Certificate, the petitioner sustained lacerated wound on the forehead 2" x 2", abrasion on the left shoulder and both the injuries are simple in nature and as per Ex.A-10-C.T.Scan of brain report, there is no evidence of any fracture. On fair reading of the award passed by the Tribunal do not indicate any cogent reason as to the entitlement of the claimant for Rs.50,000/- under the head of disability in the absence of any oral evidence of the doctor and also in the absence of any disability certificate. In view of the above, this Court feels that the appeal filed by the appellant/2nd respondent/insurance company needs consideration. Therefore, this Court is of the opinion that the claimant is not entitled to the amount of Rs.50,000/- granted

by the Tribunal towards disability. Therefore, the total compensation comes to Rs.1,07,000/- (Rs.1,57,000/- - Rs.50,000/-). With regard to the interest is concerned, the same is reduced from 9% to 7.5%. Except the said modification, the remaining operative portion of the impugned order is confirmed.

8. In the result, the Motor Accident Civil Miscellaneous Appeal is partly allowed by reducing the compensation amount awarded by the Tribunal from Rs.1,57,000/- to Rs.1,07,000/- and the interest is reduced from 9% to 7.5%, payable by both the appellant & the 2nd respondent jointly and severally. The appellant & the 2nd respondent 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 claimant is permitted to withdraw the entire amount. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 5th November, 2019

KL