

HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.759 OF 2012

JUDGMENT:

Aggrieved by the order and decree, dated 12.09.2011, passed by the learned XI Additional Chief Judge (Fast Track Court), City Civil Court, Hyderabad (for short 'Tribunal') in O.P. No.2714 of 2005, the appellant preferred the present appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'Act').

2. The Tribunal by the aforesaid order awarded a sum of Rs.61,500/- with interest at 7.5% per annum thereon as compensation as against the claim laid by the appellant herein under Section 163-A of the Act for Rs.1,50,000/- for the injuries he received in a road accident.

3. The appellant herein is the petitioner in O.P. No.2714 of 2005, while respondent Nos.1 and 2, who are owner and insurer of Maruti Van bearing registration No.AP 31E 6111, respectively, are arrayed as such.

4. For the sake of convenience, the parties herein are referred to as they were arrayed before the Tribunal.

5. Brief facts that led to filing the claim petition are; on 19.09.2005 the petitioner was proceeding on his motorcycle and when he reached near Autonagar at about 4.00 p.m., Maruti Van bearing registration No.AP 31E 6111 came on wrong side in a rash and negligent manner and hit his motorcycle, due to which, he sustained grievous injuries; that

Vanastalipuram Police registered a case against the driver of the Maruti Van; that the petitioner was earning a sum of Rs.3,000/- per month as a worker in RTC Logistic; that due to the aforesaid accident, he incurred huge expenditure and lost earnings for a considerable period and, therefore, requested the Tribunal to grant the aforesaid amount as compensation.

6. Respondent No.1, owner of Maruti Van, remained *ex parte* before the Tribunal.

7. Respondent No.2 - Insurer of the vehicle, filed counter contending that the accident occurred was not due to negligent driving of the driver of the accident vehicle; that the claim made by the petitioner is excessive and finally requested to dismiss the claim with costs.

8. The Tribunal framed three issues for trial. During inquiry PWs.1 and 2 were examined and got marked Exs.A-1 to 13 on behalf of the petitioner, while no evidence, both oral and documentary, was adduced on behalf of the insurer. After hearing both sides and analyzing the evidence on record, the Tribunal gave a finding on issue No.1 that the accident had occurred due to rash and negligent manner on the part of the driver of the accident vehicle, and on issue No.2, on appraisal of medical evidence awarded a sum of Rs.61,500/- as compensation with interest at the rate of 7.5% per annum thereon from the date of petition till the date of deposit.

9. Dissatisfied with the quantum of amount awarded by the Tribunal, the petitioner preferred the present appeal contending the Tribunal has not considered the injuries sustained by him and the medical evidence properly while awarding the compensation; that had the Tribunal considered the disability sustained by the petitioner, it would have awarded more compensation; that the Tribunal also did not take his monthly earnings properly.

10. Heard Mrs. B. Roja Ramani, learned counsel for the petitioner - appellant and Sri E. Venugopal Reddy, learned Standing Counsel for respondent No.2 - Insurer.

11. It is contended by the learned counsel for the petitioner that what was awarded by the Tribunal is very low and the Tribunal ought to have awarded more compensation keeping in view the evidence let in by the petitioner both oral and documentary and also the disability sustained by him and, therefore, requested to award the compensation as claimed by the petitioner.

12. Whereas, the learned Standing Counsel for respondent No.2 - Insurer would submit that there is no infirmity in the order passed by the Tribunal as the Tribunal having gone through the entire evidence on record and that the Tribunal has dealt with each and every head and arrived at the sums, as such, requested to dismiss the appeal.

13. During pendency of the present appeal, the petitioner filed an application in I.A.No.1 of 2019 under Order XLI, Rule 27 read with 151 of Code of Civil Procedure, 1908, seeking permission to receive disability certificate as additional evidence. This Court dismissed the same on the ground that such certificate was issued by PW.2 after disposal of the O.P. and, therefore, same cannot be looked into at this stage.

14. In the case at hand, there is no dispute with regard to occurring of accident and the injuries sustained by the petitioner in the accident. The only dispute centers around the case, is as to the quantum of compensation to which the petitioner is entitled. The petitioner claimed a compensation of Rs.1,50,000/- under various heads. The Tribunal granted only a sum of Rs.65,500/- viz., Rs.4,500/- towards loss of earnings, Rs.20,000/- towards medical expenditure; Rs.3,000/- towards damage caused to the motorcycle; Rs.15,000/- towards surgery for removal of implants; Rs.4,000/- towards extra nourishment, and Rs.15,000/- towards pain and suffering. Though Tribunal awarded a sum of Rs.15,000/- towards surgery for removal of implants, did not grant any amount for the fracture injuries sustained by the petitioner. In fact, the Tribunal could have granted some amount for the fracture injuries. As per the evidence, both oral and documentary, it is clear that the petitioner sustained a fracture to his left tibia and simple injuries. But, the Tribunal ignored in granting some amounts for the said injuries as well as loss of amenities. Therefore, keeping in view the nature of fractures, it would be just and reasonable to grant a sum of Rs.25,000/- towards

fractures and a sum of Rs.5,000/- towards loss of amenities to which the petitioner is entitled in addition to the amount that was already granted by the Tribunal. Thus, in all, the petitioner is entitled to Rs.91,500/- towards compensation as against the amount of Rs.1,50,000/- claimed by the petitioner. The interest, at the rate of 7.5% per annum, shall carry on the enhanced amount of Rs.30,000/- from the date of petition till the date of deposit.

16. Accordingly, the Motor Accident Civil Miscellaneous Appeal is allowed in part and the order and decree, dated 12.09.2011 passed by the Tribunal in O.P. No.2714 of 2005 is modified enhancing the compensation to Rs.91,500/- (Rupees Ninety One Thousand and Five Hundred only) from 61,500/- awarded by the Tribunal. The enhanced amount shall carry interest @ 7.5% per annum from the date of claim petition till realization. However, there shall be no order as to costs.

As a sequel, miscellaneous petitions, if any, pending in the appeal shall stand closed.

T. AMARNATH GOUD, J

August 02, 2019
Mgr