

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA.No. 3243 OF 2005

JUDGMENT:

This appeal is preferred by the petitioner in O.P.No.919 of 2002 on the file of the Chairman, Motor Accident Claims Tribunal-cum-II Additional District Judge (FTC), Nizamabad (for short, 'the Tribunal'), dissatisfied with the award dated 31.03.2005 granting a sum of Rs.10,500/- towards compensation as against Rs.1,50,000/- claimed under Section 166 of the Motor Vehicles Act, 1988 read with Rule 455 of the A.P.Motor Vehicles Rules, 1989 (for short, 'the Act').

2. The appellant herein is the petitioner before the Tribunal, while the respondent Nos.1 and 2 the owner and insurer of the Auto bearing No.AP 25 U 268, respectively, are the respondents before the Tribunal.

3. The fact-situation occurring in the instant case is that on 24.03.2002, while the petitioner was traveling in an Auto bearing No.AP 25 U 268, to go to Nizamabad town, at about 6.30 p.m. the driver of the said Auto drove the same in a rash and negligent manner and lost control over the Auto, as a result of which, the Auto fell down and turned turtle and the petitioner sustained injuries to his head, right leg besides the injuries on other parts of the body. Immediately, after the accident the petitioner was treated by Dr.Sandeep Bhargava, Civil Assistant Surgeon working at Government Hospital, Nizamabad. The Traffic Police Station of Nizamabad registered a case in Crime

No.68/2002 against the driver of the said Auto. Prior to the accident the petitioner used to earn Rs.5,000/- per month . The grievance of the petitioner is that after the accident he is unable to attend to his regular duties due to the injuries and permanent disability sustained by him; and that his family members are also suffering a lot of financial difficulties. Hence, the petitioner claimed compensation of Rs.1,50,000/-.

4. The 2nd respondent-insurance company filed counter denying the age, income of the petitioner and also the injuries sustained by the petitioner in the accident. It also denied the allegation that the driver of the auto drove the same in a rash and negligent manner. It is also stated that the auto involved in the accident was not having valid and subsisting licence to drive the auto; that the insurance policy issued in respect of the said auto does not cover the risk of passengers traveling in it; and that the petition is bad for non-joinder of necessary parties as the driver of the said auto was not impleaded as a party to the OP and as such prayed to dismiss the petition.

5. Basing on the pleadings, the Tribunal framed three issues which reads as follows;

1. Whether the accident occurred due to rash and negligent driving of the auto bearing No.AP 25U 268 by its driver?
2. Whether the petitioner is entitled for any compensation? If so, to what just amount and from which of the respondents?
3. To what relief?

6. During enquiry before the Tribunal, the petitioner himself examined as P.W.1 and Dr.Sandeep Bhargava was examined as P.W.2 and Exs.A1 to A12 were marked. On behalf of respondents Ex.B1- Insurance Policy was marked but no evidence was adduced by the respondents.

7. The Tribunal, basing on the evidence of PW1 and Exs.A1-FIR, A2-charge sheet, held that the accident occurred due to rash and negligent driving of the driver of the offending vehicle and accordingly answered Issue No.1 in favour of the petitioner.

8. On issue No.2, regarding quantum of compensation, the Tribunal awarded a sum of Rs.10,500/- towards compensation to the petitioner with interest @ 9% p.a. from the date of petition till the date of realization making the respondents 1 and 2 jointly and severally liable to pay the compensation.

9. Dissatisfied with the award of compensation granted by the Tribunal, the petitioner preferred the instant appeal impugning the award seeking for enhancement of compensation with interest there on and costs.

10. Heard both sides.

11. Learned counsel for the appellant submits that though the petitioner suffered two fractures, the Tribunal granted a meager amount of Rs.5,000/- each towards those fractures. He also submits

that since the petitioner suffered two fractures, he has taken rest for one month, but, the Tribunal has granted only an amount of Rs.500/- towards loss of earnings and the same has to be enhanced. He also submits that no amount was granted by the Tribunal towards Medical Expenses, extra nourishment, pain and suffering and attendant charges.

12. The Tribunal while dealing with quantum of compensation in issue No.2 at para 10 stated that the petitioner suffered two fractures to his right leg i.e. tibia and fibula and granted Rs.5,000/- each as compensation. But, this Court is of the opinion that the same requires to be enhanced up to 20,000/- each.

13. Since the petitioner suffered two fractures, at least, he would have taken rest for a period of one month and would not have attended his regular duties for one month. As such, an amount of Rs.4,500/- is to be granted to the petitioner towards loss of earnings.

14. Since the petitioner sustained two fractures he would have suffered great pain. But, the Tribunal has not granted any amount towards pain and suffering. As such, an amount of Rs.15,000/- can be awarded towards pain and suffering and an amount of Rs.15,000/- towards extra nourishment.

15. The Tribunal has not granted any amount towards medical expenses. Hence, an amount of Rs.10,000/- can be granted towards medical expenses.

16. Thus, in total the petitioner is entitled to a sum of Rs.84,500/- towards compensation.

17. Accordingly, the MACMA is allowed in part enhancing the compensation to Rs.84,500/- (Rupees eighty four thousand and five hundred only) from Rs.10,500/-, with interest at the rate 7.5% on the enhanced amount of Rs.74,000/- from the date of petition till realization. There shall be no order as to costs.

As a sequel, miscellaneous applications, if any, pending in this appeal shall stand closed.

04.04.2019
tk.

A.RAJASHEKER REDDY, J

