

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A.No.538 of 2008

AND

I.A.No.2 OF 2012 (MACMAMP.No.5654 of 2012)

IN/AND

M.A.C.M.A. No.2707 OF 2012

COMMON JUDGMENT:

MACMA.No.538 of 2008 is filed by the 2nd respondent/insurance company and MACMA.No.2707 of 2012 is filed by the petitioner/claimant aggrieved by the order and decree dated 08.01.2007 passed in O.P.No.1110 of 2005 by the III Additional Chief Judge, City Civil Court, Hyderabad (for short, 'the trial Court').

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the O.P. before the trial Court.

3. The brief facts of the case are that on 18.11.2004, the petitioner was traveling in the auto and at Malkapur Culbert, another auto bearing No.AP 28V 6198 came in a high speed in a rash and negligent manner and hit against the auto in which the petitioner was traveling. He sustained multiple injuries and fractures and was shifted to Osmania General Hospital where operation was conducted for both the legs and nails were inserted in the femur and tibia and he had also sustained "Peris Pelvic Paerraphina" and other operation for three times was conducted on 19.11.2004, 04.12.2004 and 08.12.2004. There was deformity and the shortening of right leg and on that account, he sustained disability. Hence, the petitioner filed the above O.P. against the

respondents, owner and insurer of the offending vehicle, claiming compensation of Rs.2,00,000/-.

4. Before the trial Court, the first respondent remained *ex parte*, and the second respondent filed 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 evidence produced by the parties, the trial Court held that as the petitioner as well as the driver of the offending vehicle did not file the driving licenses and as he failed to examine the driver of the offending vehicle as well as the driver of the auto where the petitioner was traveling, there is contributory negligence on the part of the petitioner and fixed the liability of the petitioner @ 65%, which is partial permanent in nature. With regard to compensation, the trial Court granted total compensation of Rs.2,00,000/- to the appellant along with 7.5% interest. Aggrieved by the order of the trial Court, the 2nd respondent/insurance company filed MACMA.No.538 of 2008 and dissatisfied with the quantum of compensation, the petitioner/claimant filed MACMA.No.2707 of 2012 seeking enhancement of the same.

6. Heard.

7. Sri Kasireddy Jagathpal Reddy, learned counsel for the appellant in MACMA.No.2707 of 2012 submits that the appellant/claimant had filed a petition in IA.No.2 of 2012

(MACMAMP.No.5654 of 2012) to receive additional document i.e., Disability Certificate, dated 27.08.2010, issued by the Medical Board of Government Hospital, Mahaboobnagar, in the name of the appellant/claimant, to show that he had sustained disability of 72% with a request to mark the same as Ex.A-15 before the trial Court.

8. Sri Naresh Byrapaneni, learned Standing Counsel appearing for the 2nd respondent/insurance company, objected for the same contending that it is not clear as to whether the disability certificate pertains to the accident occurred in the year 2004 and without adducing the evidence on the same before the trial Court, it is not proper on the part of the appellant/claimant to place the same on record in the appeal.

9. In view of the rival contentions raised by both the learned counsel with regard to the genuinity of the disability certificate, I am inclined to remand the matter to the trial Court for conducting fresh trial and to dispose of the matter by taking the disability certificate into consideration, if the appellant/claimant proves the genuinity of the same. Since the matter pertains to the year 2004, priority needs to be given and the trial Court is directed to dispose of the said O.P. on merits, within a period of six (06) months from the date of receipt of a copy of this order, after giving reasonable opportunity to both sides.

10. With the above observations, I.A.No.2 of 2012 (MACMAMP.No.5654 of 2012) as well as MACMA.Nos.538 of 2008

& 2707 of 2012 are allowed setting aside the order and decree dated 08.01.2007 in O.P.No.1110 of 2005 passed by the trial Court and remanding the matter to the trial Court to dispose of the said O.P. on merits, within a period of six (06) months from the date of receipt of a copy of this order, after giving reasonable opportunity to both sides. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 8th July, 2019

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