

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA No.1501 of 2010

ORDER:

This appeal is preferred by the petitioner in O.P.No.986 of 2008 on the file of the Chairman, Motor Accident Claims Tribunal-cum-District Judge, Nizamabad (for short, 'the Tribunal'), dissatisfied with the award dated 08.07.2010 granting a sum of Rs.1,17,674/-towards compensation as against Rs.2,00,000/- claimed under Section 166 (1)(a) of the Motor Vehicles Act, 1988 (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 25V 0205, respectively, are the respondents before the Tribunal.

3. The fact-situation occurring in the instant case is that on 23.02.2008 at about 1.5 p.m. while the petitioner was traveling in Auto bearing No.AP 25/V 205 from Jannepally Village to Nizamabad, when the auto reached Palda Village sivar, the driver of the auto drove it in rash and negligent manner at high speed and dashed to a motorcycle bearing No.AP 25/B-DT/R 6017. As a result the petitioner sustained fracture of lower end of left femur, grievous injuries on both legs, both hands, head injury, multiple and grievous injuries on various parts of the body. Immediately,

the petitioner was shifted to Government Hospital, Nizamabad and thereafter shifted to Shashank Hospital, Nizamabad as there was no orthopaedic surgeon available in the Government Hospital and the doctors inserted rods, screws by conducting operation. The petitioner incurred an amount of Rs.60,000/- towards medical expenses. The petitioner was hale and healthy prior to the accident and is a butcher and earning Rs.12,000/- per month. After the accident due to fractures and grievous injuries the petitioner is unable to walk and work and became unfit to do any other works. It is further pleaded that the accident occurred only due to rash and negligent driving of the driver of the Auto. Hence, he claimed an amount of Rs.2,00,000/- towards compensation.

4. The 1st respondent being the owner of the auto filed counter admitting the manner of the accident and denying the injuries sustained and expenses incurred by the petitioner. It is further stated that if any compensation is awarded the same has to be indemnified by the 2nd respondent as his Auto is insured with the 2nd respondent.

5. The 2nd respondent filed counter denying the allegations made in the claim petition. He denied that the accident occurred due to the rash and negligent driving of the Auto. He also denied the health condition, injuries sustained by the petitioner and expenditure incurred by

him. It was also denied that the auto alleged to have caused the accident was insured with this respondent company at the time of accident as stated by the petitioner in his claim petition. It is also stated the compensation claimed by the petitioner under various heads is excessive.

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

1. Whether the accident has taken place due to rash and negligent driving of auto bearing No.AP 25/V-205 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?

7. To substantiate his case, the petitioner himself examined as PW1 and one Dr.K.Motilal as PW2 and marked Exs.A1 to A13. On behalf of respondents Ex.B1-copy of insurance policy was marked.

8. The Tribunal, basing on Exs.A1-FIR, A2-charge sheet and A3-wound certificate, wherein the date of accident is mentioned as 23.02.2008, and also basing on the evidence of PW1 held that the accident occurred due to rash and negligent driving of the driver of the Auto and accordingly answered Issue No.1 in favour of petitioner.

9. On issue Nos.2 and 3, basing on Exs.A7 and A8-prescriptions and medical bills, respectively, the Tribunal awarded Rs.56,674/- towards medical expenses. Taking into consideration treatment taken by the petitioner and also the injuries sustained by him an amount of Rs.30,000/- was granted towards permanent partial disability for the fracture of femur. The Tribunal granted Rs.6,000/- towards fracture of toe; Rs.15,000/- towards pain and suffering; and Rs.10,000/- towards loss of earnings of the petitioner stating that the petitioner must have taken treatment for a period of three months. Thus, in total the Tribunal awarded an amount of Rs.1,17,674/- towards compensation making the respondents 1 and 2 liable jointly and severally with proportionate costs and interest @ 7.5% p.a. from the date of petition till the date of realization.

10. 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.

11. In this case it is to be seen that the Tribunal, basing on the evidence of PW1 and Exs.A1-FIR, A2-charge sheet and in view of the fact that no rebuttal evidence is produced by the respondents, held that the accident

occurred due to rash and negligent driving of the driver of the offending vehicle, and the said finding tendered by the Tribunal cannot be interfered with, as it is claimants appeal for enhancement of compensation and that no appeal is filed by respondents against the said finding.

12. Now, the short point that arises for consideration is, whether the petitioner is entitled to enhancement of compensation?

13. In this case it is to be seen that Ex.A4-disability certificate issued by the Medical Board goes to show that the claimant/appellant suffered 45% disability. But, the Tribunal granted an amount of Rs.30,000/- only without calculating the disability basing on the certificate issued by the Medical Board. The Tribunal has taken the income of the injured/appellant at Rs.3,000/- per month and granted Rs.10,000/- towards loss of earnings for the period the appellant has taken treatment. So the said amount of Rs.3,000/- can be taken as income of the deceased.

14. For calculating the amount towards permanent disability for fracture of femur, since petitioner is aged 40 years by the time of accident, as per ***Sarla Verma and others v. Delhi Transport Corporation and Another (2009) 6 SCC 121***, the relevant multiplier is '15'. Then, the amount towards partial permanent disability worked out to

Rs.2,43,000/- [3,000 x 12 x 45/100 x 15 multiplier]. As the Tribunal already granted Rs.6,000/- towards fracture of toe, the same can be enhanced to Rs.15,000/-. As the petitioner suffered two fractures and multiple injuries all over the body, the amount of 15,000/- granted by the Tribunal towards pain and suffering can be enhanced to Rs.30,000/-.

15. Thus, in total the petitioner is entitled to a sum of Rs.3,54,674/- towards compensation.

16. The amounts towards medical bills and loss of earnings of Rs.56,674/- and 10,000/- respectively, granted by the Tribunal are maintained since the same are reasonable.

17. Though the claimant claimed only Rs.2,00,000/-, as per the Judgment relied on by the petitioners in **Adam Indur Muttemma and others v. Rathod Reddia and others**¹ there is no bar in granting just compensation in excess of the claim made by the petitioner subject to payment of court fee on the additional amount granted.

18. Accordingly, the MACMA is allowed enhancing compensation from Rs.1,17,674/- to Rs.3,54,674/-. The petitioner is entitled to interest on the enhanced

¹ 2015 (4) ALT 775 (L.B)

compensation of Rs.2,37,000/- at 7.5% per annum from the date of petition till realization, as per the decision of the Apex Court in **Rajesh and others v. Rajbir Singh and others²**. The claimants have to pay the deficit Court fee or the Tribunal may deduct the amount required for the purpose of Court fee from the amount awarded to the petitioners after the respondents deposits the amount.

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

A.RAJASHEKER REDDY, J

20.02.2019
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² 2013 ACJ 1403 = 2013 (4) ALT 35