

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.556 OF 2012

JUDGMENT:

This appeal is filed by the appellant-claimant aggrieved by the Order and Decree dated 17.01.2012 in M.V.O.P.No.210 of 2009 on the file of the Motor Accidents Claims Tribunal (I Additional District Judge) at Khammam (for short, the Tribunal).

2. The brief facts of the case are that on 26.11.2006 at 7.30 pm., while the appellant was proceeding in an auto from Julurupadu to Papakollu, and when the auto reached near Tummalavagu, the driver of the auto drove it in a rash and negligent manner and dashed against motorcycle bearing No.AP20R 8354, as a result of which, the appellant sustained a fracture and crush injury on the right leg. He filed aforesaid MVOP against respondent Nos.1 and 2, the owner and the insurer of aforesaid auto, respectively, claiming compensation of Rs.5,00,000/- for the injuries sustained by him.

3. Before the Tribunal, respondent No.1 remained *ex parte*. Respondent No.2 filed its counter denying the averments of the claim petition and contended that the amount claimed is excessive and prayed to dismiss the claim petition.

4. After considering the oral and documentary evidence on record, the Tribunal came to the conclusion that both the driver of the auto as well as the rider of the motorcycle are responsible for the accident and consequently, the Tribunal fixed the contributory

negligence of the auto driver at 50%. The Tribunal awarded total compensation of Rs.1,87,000/- as against respondent No.1-owner only and exonerated the liability of respondent No.2-insurance company, as the driver of the auto had no valid driving license. Challenging the same, the appellant filed the present appeal.

5. Sri Kadaru Prabhakar Rao, learned counsel for the appellant, raised the following contents.

Firstly, though it has been proved that the accident occurred due to rash and negligent driving of the driver of the auto, the Tribunal, without there being any rebuttal evidence, wrongly came to the conclusion that the accident occurred with the contributory negligence of the auto and the motorcycle.

Secondly, the Tribunal is erred in exonerating the liability of respondent No.2 and it ought to have ordered pay and recovery.

Thirdly, mere non-filing of original medical certificate is not fatal to the case of the appellant to prove his disability, and hence, the Tribunal is erred in considering the partial permanent disability at 50% instead of 75%.

Fourthly, the Tribunal granted a sum of Rs.2,000/- towards extra nourishment, which is meager, and sought to enhance the same.

6. Before the Tribunal, the appellant claimed that in the accident, his right leg was amputated upto knee. To support his claim, the appellant examined P.W.2-the doctor, who deposed that

the appellant was brought to his hospital on 11.01.2007 for follow up treatment; that he found a fracture of crush injury and his leg was amputated and that as there was infection, he admitted the appellant and treated for a period of three months. P.W.2 also stated that the appellant suffered disability of 75%. The appellant filed medical bills worth of Rs.23,950/-.

7. The Tribunal, by taking into consideration above facts, had fixed the partial permanent disability at 50%. The Tribunal taken the notional income of the appellant at Rs.100/- per day, and by applying the multiplier '14', as the appellant was aged about 40 years, has granted an amount of Rs.2,52,000/- towards partial permanent disability. Apart from the same, the Tribunal granted Rs.30,000/- towards pain and suffering, Rs.21,000/- towards loss of income, Rs.22,000/- towards transportation, Rs.22,595/- towards medical bills, Rs.23,950/- towards hospital bills and Rs.2,000/- towards extra nourishment. As the Tribunal fixed the contributory negligence on the part of the driver of the auto, in which the appellant was travelling, at 50%, it has awarded total compensation of Rs.1,87,000/- ($\text{Rs.3,73,545/-} \times 50\% = \text{Rs.1,86,772.50 paise}$, but rounded off to Rs.1,87,000/-).

8. Insofar as finding of the Tribunal in fixing the contributory negligence of the driver of the auto at 50% is concerned, the Tribunal, on the basis of police investigation, came to such conclusion. Therefore, this Court is satisfied that the finding of the

Tribunal in that regard needs no interference. Insofar as exonerating the liability of respondent No.2 is concerned, as the driver of the auto failed to produce valid driving license, the Tribunal held that respondent No.1 violated the policy conditions and hence, he is alone is liable to pay compensation. Hence, this Court does not find any illegality of the Tribunal in that regard.

9. Coming to the issue of fixing the partial permanent disability at 50% is concerned, as the appellant could not produce the original medical certificate showing his disability, the Tribunal fixed the partial permanent disability at 50%. Hence, the finding of the Tribunal in that regard also needs no interference. Insofar as taking the notional income of the appellant at Rs.100/- per day is concerned, as the appellant was an agricultural collie, the Tribunal rightly fixed the notional income. The Tribunal granted Rs.30,000/- towards pain and suffering, Rs.21,000/- towards loss of income, Rs.22,000/- towards transportation, Rs.22,595/- towards medical bills, Rs.23,950/- towards hospital bills, which do not require any interference. Insofar as granting of Rs.2,000/- towards extra nourishment is concerned, in the circumstances of the case, this Court is inclined to enhance the same to Rs.10,000/-.

10. In the result, the Motor Accident Civil Miscellaneous Appeal is partly allowed enhancing the compensation amount awarded by the Tribunal from Rs.1,87,000/- to Rs.1,95,000/-. The enhanced

amount shall carry interest @ 7.5% per annum. Miscellaneous petitions pending, if any, shall stand closed. No costs.

Date: 21.06.2019
TJMR

T.AMARNATH GOUD, J

