

HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.2573 of 2006

JUDGMENT:

This appeal is filed by the appellant-claimant in M.V.O.P.No.63 of 2004 aggrieved by the order and decree dated 11-07-2006 passed in M.V.O.P.No.63 of 2004 by the Motor Accident Claims Tribunal-cum-I Additional Chief Judge, City Civil Court, Secunderabad (for short, the Tribunal).

2. Brief facts of the case are that the claimant filed the claim petition against the respondents claiming compensation of Rs.6,83,000/- for the injuries sustained by him in the accident occurred on 02-06-2003 due to the rash and negligent driving of the driver of the RTC bus bearing No.AP 11 Z 1507, driven by its driver when he is proceeding on his motorcycle bearing No.AP 28 7057 from his residence to the Railway Station, Secunderabad.

3. Before the Tribunal, both the respondents filed counters 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 evidence produced by the parties, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the crime vehicle and accordingly granted an amount of Rs.70,000/- towards compensation i.e. Rs.30,000/- towards treatment; Rs.20,000/- towards medical

expenses and Rs.20,000/- towards disability. Dissatisfied with the quantum of compensation, the appellant/claimant filed the present appeal.

5. Heard.

6. The Tribunal in its order, while accepting 20% partial disability, awarded consolidated amount of Rs.20,000/- towards disability, therefore, it cannot be accepted. Further, it is not open for the Tribunal that once the issue of disability is accepted, the compensation is to be awarded based on the percentage of disability.

7. Further, according to the learned Standing Counsel for the 2nd respondent, no disability certificate was issued from the Medical Board and the doctor who treated the claimant was also not examined and also pointed out certain discrepancies.

8. Considering the above facts and circumstances of the case, this Court feels that the Tribunal ought to have considered the disability of the claimant in detail before coming to the conclusion in respect of quantum of compensation. Accordingly, to give an opportunity to both sides for adducing additional oral and documentary evidence on the issue of disability, the matter is liable to be remanded back to the Tribunal for fresh consideration after following the judgment of the Apex Court in **Raj Kumar v. Ajay Kumar and Another**¹.

¹ (2011) 1 S.C.C. 343

9. Accordingly, the appeal is allowed setting aside the order and decree dated 11-07-2006 in M.V.O.P.No.63 of 2004 passed by the Tribunal and remanding the matter to the Tribunal for fresh disposal of the said M.V.O.P. on merits, after giving reasonable opportunity to both sides. No costs.

10. Miscellaneous petitions pending, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 07-11-2019
kvr

