

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.864 OF 2006

JUDGMENT:

This appeal is filed by the appellant-claimant aggrieved by the Order and Decree dated 02.12.2005 passed in M.V.O.P.No.1331 of 2001 by the Motor Accident Claims Tribunal (VII Additional District Judge) (FTC), at Nizamabad at Bodhan (for short, the Tribunal).

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

3. The brief facts of the case are that on 23.06.2001 the petitioner and others were proceeding in the jeep bearing No.MH-26-5751 belonging to the 1st respondent and when they reached near a sub-station at Baswapoor Village shivar, the driver of the said jeep drove the same in a rash and negligent manner and lost control over the same and applied brakes suddenly, due to which the jeep went aside and fell down and as such, the petitioner and others sustained multiple injuries and fractures. Immediately the petitioner was shifted to Government Hospital, Nizamabad and from there, he was shifted to a private hospital for further treatment. So far, he incurred an expenditure of Rs.50,000/- and requires further amounts for future treatment. Prior to the accident, he was hale and healthy and was doing labour work earning Rs.3,000/- per month and after the accident, he became unfit and not able to do any work

and he sustained permanent disability. Thus, he sought compensation of Rs.2,00,000/- for the injuries and fractures sustained by him in the said accident.

4. Before the Tribunal, the 1st respondent remained *ex parte*. The 2nd 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 oral and documentary evidence on record, the Tribunal dismissed the claim petition. Aggrieved by the same, the appellant/claimant filed the present appeal.

6. Heard Sri Azar Sravan Kumar, learned counsel appearing for the appellant and Sri P.Bhanu Prakash, learned standing counsel for the 2nd respondent/insurance company. Perused the material on record.

7. While dealing with Issue No.1, the Tribunal came to the conclusion that except exhibiting the attested xerox copy of the FIR, the petitioner has not placed any other material to prove that the accident has occurred on account of rash and negligent driving of the jeep by its driver and thus, in the absence of any such evidence, the oral assertions of the petitioner, who is examined as P.W.1, is of no use and the Tribunal has answered Issue No.1 against the petitioner/claimant.

8. A fair reading of the award passed by the Tribunal indicates that an opportunity needs to be given to the

petitioner/claimant to establish his claim and a better appreciation of the evidence needs to be gone into. The failure on the part of the claimant in not able to pursue the matter in right manner in leading the evidence may not be a ground for denying the claim.

9. In view of the above, without going into the merits of the case and without expressing any opinion on the facts and circumstances of the case, this Court feels that it would be just and proper to allow the appeal and remand the matter to the Tribunal to consider the M.V.O.P. afresh and decide the matter in accordance with law.

10. Accordingly, the appeal is allowed setting aside the order and decree dated 02.12.2005 in M.V.O.P.No.1331 of 2001 passed by the Tribunal and remanding the matter to the Tribunal to consider the M.V.O.P. afresh and dispose of the same on merits, within a period of four (04) months from the date of receipt of a copy of this order, after giving reasonable opportunity to both sides for adducing any evidence, oral or documentary if any. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 25th September, 2019

KL