

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA.No.1753 OF 2005

JUDGMENT:

1. This appeal is preferred by the petitioner against the Judgment in OP.No.1000 of 2000 on the file of the Motor Accidents Claims Tribunal-V Addl.District Judge, (FTC), Nizamabad (*for short, 'the Tribunal'*), for grant of compensation, which was dismissed by the Tribunal on the ground that the petitioner failed to prove that he sustained injuries and suffered any disability in the motor vehicle accident.
2. The appellant herein is the petitioner before the Tribunal, while the respondent Nos.1 and 2, are the Depot Manager and Managing Director of the respondents Corporation.
3. The factual background of the case is that on 25.02.1999, while the petitioner and one Narayana were travelling on a bicycle from Devunipally Village towards Kamareddy, at about 2.45 p.m., a bus bearing No.AP 10Z 4432 came from behind in a rash and negligent manner and dashed the cycle from behind, due to which the petitioner fell down and received injuries to his back bone, head, jaws, right cheek, right leg and other parts of the body. Immediately after the accident the petitioner was taken to Government Hospital, Kamareddy and was in-patient from 25.02.1999 to 03.03.1999 and after that he has undergone treatment with private doctors. So far he incurred an expenditure of Rs.80,000/- towards medical and incidental

charges and he requires further amount for further treatment. He was hale and healthy prior to the accident and was earning Rs.10,000/- per month working as Mason. After the accident, he became permanently disabled and lost his earning capacity. Though claimed an amount of Rs.41,45,000/- under several heads, he restricted his claim to Rs.2,00,000/-.

4. Both the respondents denied the allegations and claim of the petitioner and put the petitioner to strict proof of the same. It is also stated that the claim of the petitioner is very high and that the accident occurred due to rash and negligent driving of the petitioner but not the driver of the RTC bus, as such, they are not liable to pay any compensation.

5. The Tribunal framed two issues at the first instance and also framed additional issue No.3 subsequently which reads as follows;

1. Whether the petitioner is entitled to compensation sought for?
2. To what relief the petitioner is entitled.

Additional Issue:

3. Whether the accident occurred due to rash and negligent driving of the vehicle bearing No.AP 10Z 4432?

6. During enquiry, the petitioner himself was examined as P.W.1 and marked Exs.A1 to A5. On behalf of the respondents, no evidence is adduced and no documents were marked.

7. The Tribunal, basing on the evidence of PW1 coupled with documentary evidence i.e. Exs.A2 and A3, held that the accident occurred due to the rash and negligent driving by the driver of the Bus.

8. On issue Nos.2 and 3, the Tribunal held that though the petitioner claimed that he spent Rs.80,000/- towards medical expenses, and requires Rs.10,000/- for further treatment, he has not examined any doctor or produced any bills or prescriptions; that though the petitioner claimed permanent disability due to fracture to his back bone, he has not filed any X-ray showing his fracture injuries or any certificate from the doctor or case sheet of the treatment he has undergone; and that though he claimed that he was earning Rs.10,000/- per month by doing Mason work, no document is produced by the petitioner in support of his employment before the Court. It is further stated by the Tribunal that the only document i.e. Ex.A5-wound certificate shows that the petitioner sustained only one contusion admeasuring 2" x 5" on the back, but the said document is blank at several places such as certificate number, date, reference/letter of authorisation number, crime number and PS No. and date of issue. Besides that identification marks of petitioner also left blank. It is also left blank that through whom injured was brought and identified by whom. As such, the tribunal held that Ex.A5-wound certificate is not free from suspicion and is not inspiring confidence to come to a conclusion that petitioner actually sustained even the

said contusion mentioned in Ex.A5. In view of the above, the Tribunal has come to a conclusion that the petitioner failed to prove his case that he sustained several injuries including fracture injury and sustained disability and lost future earnings. The Tribunal also held that except his abstract declarations in his claim petition and his evidence as PW-1 there is no other trustworthy and cogent evidence in support of his bare declarations. Hence, dismissed petition.

9. Aggrieved by the dismissal of the OP by the Tribunal, the petitioner, who is the claimant, preferred the instant appeal impugning the award seeking for grant of compensation with interest there on.

10. Heard both sides.

11. Learned counsel for the appellant submits that petitioner suffered injuries and in support of the same wound certificate is marked as Ex.A5, but no amount was granted towards pain and suffering for the said injuries.

12. On all other heads, he has not pressed the appeal.

13. On the other hand learned Standing Counsel for respondent Corporation submits that even Ex.A5 was not believed by the Tribunal, as such, the Tribunal rightly dismissed the petition.

14. In this case, the manner of the accident and the rash and negligent driving of the driver of the respondent Corporation is not in dispute. Since it is a claimant's appeal, the only issue fell for consideration in the present appeal is whether the petitioner is entitled for the compensation in respect of injuries recorded in the wound certificate-Ex.A5.

15. No doubt, the Tribunal has viewed Ex.A5 with suspicion but in view of facts and circumstances, this Court is of the opinion that appellant suffered and compensation cannot be denied on mere suspicion. In view of the same, this Court is of the opinion that an amount of Rs.25,000/- will be sufficient for grant of compensation towards pain and suffering undergone by the petitioner for the wounds sustained by him. As such, an amount of Rs.25,000/- can be granted to the petitioner towards pain and suffering with interest @ 7.5% p.a. from the date of petition till the date of realisation payable by the respondents Corporation.

16. Accordingly, the appeal is partly allowed. No order as to costs.

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

A.RAJASHEKER REDDY, J

19.02.2018
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