

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.2224 OF 2009

JUDGMENT:

This appeal is filed by the appellant-claimant aggrieved by the Order and decree dated 01.11.2007 passed in O.P.No.1258 of 2002 by the Chairman, Motor Vehicle Accident Claims Tribunal (District Judge), Warangal (for short, the Tribunal).

2. The brief facts of the case are that the appellant is aged about 25 years and is a Painter. While so, on 16.01.2002 the appellant was proceeding by walk and when he reached Vasundhara Mahila Bank, Warangal, at about 11.30 hours, the Auto bearing No.AP 36U 7079 driven by its driver in a rash and negligent manner came with high speed and dashed against the appellant, as a result of which the appellant sustained grievous and simple injuries and immediately after the accident he was shifted to City Orthopaedic Hospital, Hanamkonda, where he has undergone treatment as inpatient. On complaint, the Police, Intezargunj, registered a case in Crime No.13 of 2002 against the driver of the auto for the offence punishable under Section 338 of IPC. In the said accident, the appellant sustained fracture of left humerus, tibia and fibula, closed head injury apart from other injuries all over the body. On the advice of the doctors, the appellant was shifted to Rohini Hospital, Hanamkonda, and was treated as inpatient for 10 days. On the advice of doctors again, the appellant was shifted to City Orthopaedic Hospital, Hanamkonda, and took treatment. He spent huge amount towards medical expenses and extra nourishment. The appellant lost his income during the period of bed rest. It is

further averred that the accident was due to the rash and negligent driving of the driver of crime vehicle. The 1st respondent is the owner of the crime vehicle and the 2nd respondent is the insurer of the said vehicle. Therefore, both the respondents are jointly and severally liable to pay compensation payable to the appellant. The appellant claimed a consolidated compensation of Rs.3,00,000/- under all heads.

3. Before the Tribunal, the 1st respondent remained *ex parte* and 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.

4. After considering the oral and documentary evidence on record, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the 1st respondent and awarded total compensation of Rs.1,02,550/- with interest @ 7.5% per annum i.e., Rs.60,000/- towards pain and suffering for the injuries sustained by the appellant, Rs.39,550/- towards the medical expenses and Rs.3,000/- towards extra nourishment.

5. P.W.4-Dr.P.Kali Prasad, who treated the appellant was examined and marked Ex.A-11-Disability Certificate issued by P.W.4 and Ex.A-12 is the certificate related to the Minimum wages fixation issued by the District Collector, Warangal. Since the appellant is working as a Painter, in Ex.A-12 under the class of 'Painter', an amount of Rs.133/- per day is shown as daily wage. Therefore, Rs.133/- per day is fixed as income of the appellant.

Therefore, the monthly income of the appellant comes to Rs.3,990/- (Rs.133/- x 30 days). Therefore, the annual income of the appellant comes to Rs.47,880/- (Rs.3,990/- x 12). Taking into consideration Exs.A-11 & A-12, this Court feels that it would be just and proper to fix the permanent disability of the appellant at 35%. The multiplier for the age of the deceased is '18'. Hence, the compensation under the head 'permanent disability' comes to Rs.3,01,644/- (Rs.47,880/- X 18 X 35%). The amount of Rs.60,000/- granted by the Tribunal towards Pain and Suffering remains unchanged. Since the amount of Rs.42,550/- awarded under the head of medical expenses is very meager amount, this Court feels just and proper to enhance the same to Rs.72,267/-. Therefore, the total compensation comes to Rs.4,33,911/- (Rs.3,01,644/- + Rs.60,000/- + Rs.72,267/-).

6. In the result, the Motor Accident Civil Miscellaneous Appeal is allowed by enhancing the compensation amount awarded by the Tribunal from Rs.1,02,550/- to Rs.4,33,911/- with interest @ 7.5% per annum on the enhanced amount. The respondents are directed to deposit the enhanced amount within two months from the date of receipt of a copy of this order. On such deposit, the appellant is permitted to withdraw the entire amount, on payment of deficit Court fee, as he claimed only Rs.3,00,000/-. No costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal shall stand disposed of.

T.AMARNATH GOUD, J

Date: 18th June, 2019
KL