

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.1686 of 2011

JUDGMENT:

The appellant-claimant filed this appeal against the order and decree dated 23.02.2011 passed in O.P.No.698 of 2008 by the XVI Additional Chief Judge-cum-II Additional Metropolitan Sessions Judge, Hyderabad.

2. The brief facts of the case are that on 08.11.2007 at about 1.30 PM., while the petitioner was traveling as pillion rider on a motorcycle bearing No.AP 9 AU 7649 from Shadan Engineering College to Vijaya Nagar Colony, and when they reached near Sun City Cross roads, a car bearing No.AP 13E 393 driven by its driver in a rash and negligent manner in opposite direction and dashed against the motorcycle resulting grievous injuries all over his body. Immediately, he was shifted to Shadan Hospital and thereafter, to Cure Well Hospital, for treatment. He incurred huge expenditure for treatment and medicines. Hence, the petitioner filed aforesaid O.P., claiming compensation of Rs.2,50,000/- for the injuries sustained by him in the accident.

3. The 1st respondent-owner of crime vehicle remained *ex parte*. The 2nd respondent-Insurer filed counter denying the allegations made in the claim petition *inter alia* contending that the amount of compensation claimed by the petitioner is highly excessive and exorbitant and sought to dismiss the petition.

4. During the course of trial, the petitioner examined P.Ws.1 to 4 and got marked Exs.A1 to A12. On behalf of the respondents, no oral evidence was adduced, but Ex.B-1 copy of insurance policy was marked.

5. After considering the material on record and the evidence adduced by the parties, the Court below allowed the O.P., in part awarding compensation of Rs.1,10,000/- with interest at 7.5% p.a. from the date of petition till the date of realization payable by respondents 1 and 2 jointly and severally. Aggrieved by the said quantum of compensation, the petitioner preferred the present appeal.

6. Heard.

7. Learned counsel for the appellant/claimant contended that the compensation awarded by the Court below is too meager and he prays to enhance the compensation.

8. Smt S.A.V.Ratnam, learned Standing Counsel for the 2nd respondent, contended that the compensation awarded by the Court below towards pain and suffering includes the compensation towards two fracture injuries and that as the Court below has already awarded an amount of Rs.80,000/- towards present and future medical expenditure, there is no need to enhance the compensation for future operation. She further contends that there is no evidence to show that the claimant has to undergo second surgery.

9. A perusal of the order impugned would disclose that the Court below has awarded an amount of Rs.80,000/- towards medical expenses of present and future as against the actual income of Rs.75,670/- as per Ex.A6-medical bills. In addition to it, the Court below awarded a sum of Rs.25,000/-towards pain and suffering and Rs.5,000/- towards nervous shock, in total, a sum of Rs.1,10,000/- was awarded to the claimant.

10. As per the evidence of P.W.2-Doctor, the claimant had sustained two fracture injuries on his right femur, left Olecnomnon and other injuries all over the body and he had undergone surgery on 11.11.2007 to his right femur and left ulna and nails were inserted during surgery. P.Ws.2 and 4-Doctors stated that the claimant has to undergo another surgery to remove the implants. Therefore, it is obvious that once an implant was inserted into human body by way of surgery, the same has to be removed at one point of time. As the surgery had taken place during the year 2007 and on account of hike in prices, the compensation of Rs.25,000/- awarded by the Court below is not sufficient. Therefore, it would be appropriate to award an amount of Rs.15,000/-towards second surgery. Further, as the claimant had sustained two fracture injuries, an amount of Rs.25,000/- each, is awarded. Thus, an amount of Rs.65,000/- is awarded to the claimant in addition to a sum of Rs.1,10,000/- awarded by the Court below. In total, the compensation of Rs.1,75,000/- is awarded to the claimant.

11. In the result, the appeal is allowed in part, by enhancing the compensation amount awarded by the Court below from Rs.1,10,000/- to Rs.1,75,000/-. The enhanced amount shall carry interest @ 7.5% per annum from the date of filing of this appeal to its realization. Miscellaneous petitions, if any pending in this appeal, shall stand closed. No order as to costs.

T.AMARNATH GOUD, J

11th July, 2019

sj

