

THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD

MACMA No.412 OF 2012

JUDGMENT:

This appeal is filed by the injured against the order dated 06.11.2006 passed by the Motor Accidents Claims Tribunal-cum-I Additional District Judge, Mahabubnagar (for short 'the Tribunal), in O.P.No.592 of 2004, whereby the Tribunal awarded compensation of Rs.52,000/- on account of the injuries suffered by the claimant in the motor vehicle accident as against claim of Rs.1,00,000/-, but dismissed the claim petition on the ground that claimant pressed into service certificate Ex.A.6 issued by Sai Krishna Clinic, Narayanapet stating that they were referring him to Apollo Hospital, Malakpet in respect of accident occurred at 04.30 PM on 12.06.2004 and that no person of the said hospital is examined and that the said certificate has no sanctity with regard to the time of accident and it was not issued by any eye witnesses to the accident and that the above circumstances coupled with the material contradiction regarding the luggage, which was admittedly carried on the motor cycle and the time of accident is not improbable according to R.2 and that there is no evidence that the offending vehicle was badly damaged and that the driver of the vehicle also sustained any injuries.

2. For the sake of convenience, the parties herein are referred to as arrayed in the Court below.

3. According to the petitioner, at the time of accident i.e. on 12.06.2004, as a pillion rider on the motorcycle bearing No.APE 9987 along with his friend Bhagavanthu, who was riding the motorcycle, he went to Narayanapet on their personal work. While so, at about 4.30 PM when they were proceeding towards bus stand of Narayanapet, offending motor cycle came in the opposite direction in a rash and negligent manner and hit their motor cycle, as a result, he sustained multiple bleeding and fracture injuries. Immediately, he was shifted to Government Area Hospital, Narayanapet where it was detected besides fracture, dislocation of lower jaw and lost six teeth. Then, from there, he was shifted to FMS Hospital, Hyderabad for expert treatment and there he took treatment as inpatient from 13.06.2004 to 20.06.2004 and thereafter, he continuously took treatment as out patient and spent Rs.50,000/-. Since he sustained permanent disability to his lower jaw, he is not in a position to eat hard substances.

4. Learned counsel for the claimant submitted that the Tribunal erred in concluding that the offending vehicle did not involve in the accident without there being a pleading and evidence on the part of the respondents and that the Tribunal also not erred in not granting reasonable compensation though the claimant suffered fracture of mandible, lost six teeth and incurred Rs.50,000/- towards medical expenditure alone.

5. Perused the material available on record. There is no dispute with regard to the insurance policy, driving license and injuries suffered by the claimant in the accident. The order of the

Tribunal discloses that though the Tribunal on issue No.2 arrived at compensation to be granted to the claimant, based on the finding on issue No.1 that there was contradiction between the evidence of PWs.1 and 2 as to carrying a thing while travelling on a motorcycle and PW.1 deposed that he being a pillion rider was holding a carton containing kirana material weighing about two kilograms while PW.2 stated that PW.1 was carrying a small bag, but not a carton and that carrying something by PW.1 is against the provisions of Section 125 of the Motor Vehicles Act, 1988 (for short 'the Act') dismissed the claim petition.

6. Section 125 of the Act reads as under:

“Obstruction of driver: No person driving a motor vehicle shall allow any person to stand or sit or to place anything in such a manner or position as to hamper the driver in his control of the vehicle.”

7. Even according to Section 125 of the Act, no person driving a motor vehicle shall allow to stand or sit or to place anything in such a manner or position to hamper the driver in his control of the vehicle. In the case on hand, only rider and pillion rider were proceeding on the motorcycle at the time of accident is not in dispute. There was a minor discrepancy in the evidence of PWs. 1 and 2, which is only with regard to a carton or bag, carrying on the motorcycle, containing two kilograms, which was not of a heavy weight and not prevented to carry on the motorcycle. Further, there was no pleading in the counter filed by the insurance company before the Tribunal as to occurrence of the accident only due to carrying weight in a carton or bag by the pillion rider and

that the insurance company does not chose to enter into witness box to support their case. As such Section 125 of the Act has no application to the present facts of the case. When the Motor Vehicles Act is a beneficial legislation, the claimant cannot be deprived of his or her legitimate right. Therefore, the finding of the Tribunal on issue No.1 is erroneous and the same is liable to be set aside.

8. Now coming to the injuries as well as treatment undergone by the claimant is concerned, the Tribunal has already elaborately dealt with them are well considered, requires no interference except that the Tribunal erred in not considering the compensation towards disfigurement of teeth, and, hence, Rs.10,000/- is granted towards the same. Thus, the claimant is entitled for a total compensation of Rs.62,000/- with interest @ 7.5% per annum from the date of petition till the date of realization. The 2nd respondent is directed to deposit the compensation amount within three months from the date of judgment.

9. In the result, the appeal is allowed to the extent indicated above setting aside the order dated 06.11.2006 passed by the Motor Accidents Claims Tribunal-cum-I Additional District Judge, Mahabubnagar. There shall be no order as to costs.

Miscellaneous petitions if any, pending shall stand closed.

T.AMARNATH GOUD, J

26.07.2019
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