

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.2774 OF 2008

JUDGMENT:

This appeal is filed by the appellant-claimant aggrieved by the Order and Decree dated 22.05.2008 passed in O.P.No.116 of 2006 by the Special Judge for Economic Offences-cum-VII Additional Metropolitan Sessions Judge-cum-XXII Additional Chief Judge, Hyderabad (for short, the Tribunal).

2. The brief facts of the case are that on 30.12.2015 at about 10.00 pm., while the appellant was going on a motorcycle bearing No.AP11J 2388 as a pillion rider from L.B.Nagar to Balapur cross roads, and when he reached Mithilanagar turning, the driver of auto bearing No.AP12U 7361 drove it in a rash and negligent manner at high speed and dashed against the motorcycle. In the said accident, the appellant sustained grievous injuries. He filed aforesaid OP against respondents Nos.1 and 2, owner and insurer of auto, claiming compensation of Rs.3,00,000/- for the injuries sustained by him.

3. Before the Tribunal, respondent No.1 remained *ex parte*. Respondent No.2 filed counter stating that the driver of the auto was not having valid driving licence and hence, it is not liable to pay compensation.

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 driver of the

auto and awarded compensation of Rs.29,179/- i.e., Rs.20,000/- towards pain and suffering, Rs.2,179/- towards medical bills, Rs.2,000/- towards loss of income and Rs.5,000/- towards extra nourishment, with interest @ 7.5% per annum. Dissatisfied with the quantum of compensation, the appellant filed the present appeal, seeking enhancement of the same.

5. Heard.

6. A perusal of the record, it reveals that though the appellant filed Ex.A.9 to show that he suffered 20% disability, he did not examine the doctor who issued the same. Therefore, the Tribunal did not take into consideration. But, P.W.2, the doctor who treated the appellant in the Osmania General Hospital, Hyderabad, was examined and stated that the appellant was admitted in hospital with fracture shaft of right femur; that he had done surgery to the appellant on 09.01.2006 and a nail was inserted into the thighbone and that the appellant was discharged on 18.01.2006. He further deposed that appellant was suffering 15% to 20% disability. Therefore, the evidence of P.W.2, who was Civil Assistant Surgeon and Assistant Professor Orthopedic in Osmania General Hospital, cannot be brushed aside and hence, I am inclined to take the disability of the appellant at 15%.

7. Though the appellant stated that he was earning Rs.4,500/- per month by working as Tailor, he did not file any proof to that effect. Hence, I am inclined to fix the income of the appellant

notionally at Rs.3,000/- per month. Hence, the compensation under the head 'permanent disability' comes to Rs.86,400/- (Rs.3,000 X 12 X 16 X 15%). The Tribunal has granted loss of income only for one month, but, in view of the seriousness of injuries, I am inclined to grant loss of income for three months. Therefore, the compensation under the head 'loss of income' comes to Rs.9,000/- (Rs.3,000/- X 3 months). The other amounts granted by the Tribunal remain unchanged.

8. In the result, the Motor Accident Civil Miscellaneous Appeal is partly allowed enhancing the compensation amount awarded by the Tribunal from Rs.29,179/- to Rs.1,22,579/-. The enhanced amount shall carry interest @ 7.5% per annum from the date of claim petition till realization. Miscellaneous petitions pending, if any, shall stand closed. No costs.

Date: 15.07.2019
TJMR

T.AMARNATH GOUD, J