

**HON'BLE SRI JUSTICE T.AMARNATH GOUD**

**M.A.C.M.A. No.425 of 2012**

**JUDGMENT:**

This appeal is filed by the appellant-claimant aggrieved by the Order and Decree dated 22-11-2006 passed in O.P.No.529 of 2004 by the Motor Vehicle Accidents Claims Tribunal (I Additional District Judge), Mahabubnagar (for short, the Tribunal).

2. The brief facts of the case are that on 12-06-2003, the appellant/claimant boarded the offending auto at Shadnagar to go to his village Rangapur and at about 9.30 pm when the auto reached the limits of Nandigama, near Neem-oil factory, it was driven in a rash and negligent manner and dashed against one RTC bus bearing No.AP 10 Z 2997 coming on the opposite direction. As a result of which, the appellant-claimant and other inmates including the driver of the auto sustained injuries. The driver also died subsequently. He was shifted to Government Hospital, Shadnagar for treatment and later shifted to OGH, Hyderabad on 13-06-2003. He spent Rs.20,000/- for treatment for three months as out patient. He was bed ridden and disabled for those three months and sustained loss of income of Rs.5,000/- per month. Hence, the appellant-claimant filed aforesaid OP against the respondents claiming compensation of Rs.1,00,000/- for the injuries sustained by him.

3. In the claim petition, the 2<sup>nd</sup> respondent-insurer filed its 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 drivers of both the vehicles and that the appellant/claimant failed to prove that he sustained grievous injuries. However, holding that the appellant/claimant sustained simple injuries, and he is entitled for compensation of Rs.7,000/- i.e. Rs.5,000/- towards pain and suffering and Rs.2,000/- towards extra nourishment, transportation and loss of income. But, however, granted only Rs.3,500/- as total compensation since there is a contributory negligence on the part of both the drivers of the vehicles. Accordingly, it partly allowed the claim petition for compensation of Rs.3,500/- with proportionate costs and interest at 7%.

5. Dissatisfied with the quantum of compensation, the appellant/claimant filed the present appeal, seeking for enhancement of the compensation.

6. Heard the learned counsel for the appellant-claimant and the learned Standing Counsel for the 2<sup>nd</sup> respondent-insurer.

7. Learned counsel for the appellant-claimant contends that the Tribunal erred in awarding 50% of the compensation since the claimant is traveling in an auto and that there is no negligence on the part of the driver of the auto. Further, though the appellant sustained three simple injuries, he

suffered from pain and suffering for a period of three months and therefore, he prays to allow the appeal by enhancing the compensation as he claimed in the claim petition.

8. Learned counsel for the 2<sup>nd</sup> respondent-insurer contends that there is no medical evidence on record showing the appellant-claimant underwent any operation for the injuries/fracture sustained by him. However, he fairly submits that since Ex.A-2, summary sheet of the hospital, shows that there is some fracture, compensation may be enhanced from Rs.3,500/- to Rs.30,000/- i.e. Rs.10,000/- towards fracture, Rs.15,000/- towards three simple injuries (Rs.5,000/- each), Rs.5,000/- towards pain and suffering and Rs.2,000/- towards transportation.

9. The only issue involved in this appeal is with regard to enhancement of compensation awarded by the Tribunal towards the injuries meted out by the appellant-claimant. As against the claim of Rs.1,00,000/-, the Tribunal awarded compensation only Rs.3,500/-. Admittedly, the accident has taken place in collusion between auto and the bus. The appellant-claimant was passenger in the auto and due to the accident, the auto driver died. On the strength of Ex.A-2, summary sheet of the Government Hospital, it is clear that there is a fracture to the right leg. However, since the fracture is not operated and the same is treated as a simple fracture, I am of the considered view that the appellant-claimant is entitled for enhancement of compensation.

10. In the facts and circumstances of the case, this Court feels that it would be appropriate to enhance the compensation under various heads as follows:

| Sl.No. | Name of Head                                       | Awarded by Tribunal | Awarded by this Court |
|--------|----------------------------------------------------|---------------------|-----------------------|
| 01.    | Pain and suffering                                 | Rs.2,500/-          | Rs.5,000/-            |
| 02.    | Transportation, extra nourishment & loss of income | Rs.1,000/-          | Rs.2,000/-            |
| 03.    | Fracture                                           | Nil                 | Rs.10,000/-           |
| 04.    | Three injuries                                     | Nil                 | Rs.15,000/-           |
| Total  |                                                    | Rs.3,500/-          | Rs.32,000/-           |

11. In the result, appeal is allowed in part by enhancing the compensation awarded by the Tribunal from Rs.3,500/- to Rs.32,000/- (Rupees Thirty Two Thousand only). The enhanced amount of compensation shall carry interest at 7% per annum. The respondents are directed to deposit the enhanced amount along with proportionate costs and interest 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. No costs.

12. Miscellaneous petitions pending, if any, shall stand closed.

**JUSTICE T.AMARNATH GOUD**

Date: 21.06.2019  
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