

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. NO.2908 OF 2018

JUDGMENT:

This appeal is preferred by the appellant-Insurance Company questioning the Order and Decree of the Motor Accident Claims Tribunal-cum-XII Additional Chief Judge, City Civil Court, Hyderabad (for short, the Tribunal) in M.V.O.P.No.519 of 2014, dated 16.03.2018.

2. The brief facts of the case are that on 05.07.2013 at about 2.00 P.M., after purchasing vegetables at Bachupally X Roads, while the claimant was proceeding by walk, and when he reached cross roads, a lorry tipper bearing No.AP28TA 1044 came from Gandimysamma side at high speed in a rash and negligent manner and dashed the claimant. In the said accident, the appellant sustained severe and grievous injuries and immediately, he was shifted to the hospital. He filed the aforesaid MVOP against owner of the lorry (respondent No.2 herein) and insurer (appellant herein), claiming compensation of Rs.5,00,000/- for the injuries sustained by him.

3. Before the Tribunal, owner of the lorry, remained *ex parte*. The appellant-Insurance Company filed its counter denying the allegations and contended that the amount claimed by the claimant is highly excessive and that it is not liable to pay any compensation 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 driver of the

lorry and awarded total compensation of Rs.2,95,450/- under various heads, with interest at the rate of 9% per annum. Aggrieved by the said order, the appellant-Insurance Company filed the present appeal.

5. Sri V.Krishna Rao, learned counsel appearing for the appellant-insurance company, submitted that the injured-claimant took treatment under ESI Scheme and therefore, he is not entitled for the compensation under Motor Vehicles Act. He further submitted that the Tribunal erred in granting medical bills and also erred in awarding compensation under the head of disability. On the above submissions, he prayed to allow the appeal by setting aside the order of the Tribunal.

6. Sri Ajay Kumar Madishetty, learned counsel appearing for respondent No.1, submitted that the Tribunal passed a well reasoned order and sought to dismiss the appeal.

7. It is contended on behalf of the appellant-insurance company that the injured-claimant has made parallel claims both under ESI Scheme and also under the Motor Vehicles Act. But, he did not let in any evidence to that effect and hence, I see no force in the said contention of the learned counsel. A perusal of the record reveals that the injured has claimed the amount, which is not covered under ESI Scheme.

8. Insofar as the amount awarded by the Tribunal for fixing the artificial limb is concerned, though the appellant took treatment in ESI Hospital, no artificial limb was provided to him, as there is no provision under ESI Scheme to provide artificial limb to the persons

who lost their limbs in the accident. Therefore, the Tribunal has rightly awarded an amount of Rs.1,20,000/- for fixing the artificial limb. The Tribunal has also rightly awarded the amount of Rs.1,17,600/- under the head of disability, since the said amount is not covered in the medical bills and also in the treatment under ESI Scheme. Therefore, there are no grounds to interfere with the order of the Tribunal and hence, the appeal is liable to be dismissed.

9. Accordingly, the Motor Accident Civil Miscellaneous Appeal is dismissed. Miscellaneous petitions pending, if any, shall stand dismissed. No order as to costs.

Date: 27-09-2019
Shr

T.AMARNATH GOUD, J

