

HONOURABLE SRI JUSTICE K. LAKSHMAN

M.A. C.M.A. No.2726 OF 2006

JUDGMENT:

Feeling aggrieved by the award of Rs.50,500/- (Rupees fifty thousand five hundred only) towards compensation as against the claim of Rs.2,50,000/-, laid under Section 166 of the Motor Vehicles Act, 1988, read with Rule 455 of A.P. Motor Vehicle Rules, 1989, read with Section 140 (c) of the Motor Vehicles Act, 1988 (for short 'MV Act'), seeking enhancement of compensation, appellant preferred this Civil Miscellaneous Appeal assailing the award and decree dated 19.07.2006 passed by the learned XII Additional Chief Judge, City Civil Court (Fast Track Court), Hyderabad.

2. The appellant is claimant in the O.P. before the Tribunal, while respondent Nos.1 and 2 are owner and insurer, respectively, of the auto-rickshaw bearing No.AP-12-U-961 which involved in the accident.

3. Before the Tribunal, respondent No.1, owner of the auto-rickshaw, remained *ex parte*, and insurer of the auto-rickshaw alone contested the O.P. by filing counter.

4. During enquiry, the claimant, besides examining himself, as PW.1, also examined the doctor who treated him as PW.2, and marked Exs.A-1 to A-12 and Exs.X-1 to X-4. On behalf of the

insurer, no oral evidence was adduced except marking Ex.B-1 copy of the insurance policy of the auto-rickshaw.

5. The Tribunal, on appreciation of entire evidence, both oral and documentary, held that the accident occurred due to rash and negligent driving of the driver of the auto-rickshaw belonging to respondent No.1. Admittedly, insurer of the vehicle did not prefer any appeal challenging the said finding of the Tribunal. Therefore, the above finding of the Tribunal attained finality.

6. In view of the above, the only issue that falls for consideration before this Court is whether the compensation awarded by the Tribunal is inadequate.

7. Heard Sri V. Atchuta Ram, learned counsel for the appellant (claimant), and Smt. Kalpana Ekbote, learned counsel for the 2nd respondent - insurance company, and perused the material on record.

8. It is the specific case of the claimant that he sustained two grievous injuries and one simple injury in the accident. To speak about the injuries sustained by the claimant, he examined the Doctor, who treated him as PW.2, and marked Ex.A-3 case diary, Exs.A-5 and A-6 original O.P. records, ExA-7 discharge record, Ex.A-12 and Exs.X-1 - X-ray films, and Exs.X-2 and X-3 O.P. record and O.P. card respectively.

9. PW.2 – Doctor, who treated the claimant, deposed that the disability sustained by the claimant is 20%. However, during his cross-examination, PW.2 admitted that the disability sustained by the claimant is below 10% and he has not issued any disability certificate. The claimant also did not file any certificate to show the disability sustained by him. In the circumstances, the Tribunal has awarded lump sum compensation.

10. According to the learned counsel for the claimant, the Tribunal has awarded meagre amounts towards shock, pain and suffering, and injuries etc. According to the claimant, he is entitled to Rs.2,50,000/- towards compensation as claimed by him.

11. Supporting the impugned award, learned counsel for the insurer would contend that on consideration of entire evidence on record, the Tribunal rightly awarded an amount of Rs.50,500/- towards compensation and the same needs no interference.

12. On perusal of the entire evidence, more particularly, evidence of the doctor - PW.2, who treated the claimant, it is not in dispute that the claimant sustained two grievous injuries and one simple injury. He was admitted in the hospital on 21.10.2002 and discharged on 25.10.2002 i.e., for five (5) days he has taken treatment as inpatient for the injuries sustained by him.

13. According to the claimant, he used to work as Sales Supervisor in M/s. Anupama Distributors (P) Limited and earning

Rs.5,000/- per month as on the date of accident. Admittedly, the claimant sustained two grievous injuries and one simple injury. Hence, this Court is of the view that the claimant is entitled to an amount of Rs.15,000/- each towards two grievous injuries and Rs.5,000/- towards simple injury, totalling to Rs.35,000/- towards injuries instead of Rs.27,000/- awarded by the Tribunal. The amount of Rs.5,000/- awarded by the Tribunal towards shock, pain and suffering and loss of amenities in life is maintained. The claimant is entitled to Rs.20,000/- towards extra-nourishment since he has taken treatment as inpatient for five days. The claimant has claimed an amount of Rs.9,500/- towards medical bills and the same was awarded by the Tribunal which needs no interference. The claimant is entitled to Rs.8,000/- towards loss of earning capacity, Rs.5,000/- towards transportation charges and Rs.1,000/- towards damages to clothes.

14. Accordingly, the claimant is entitled to following amounts towards compensation:

1) Two grievous injuries @ Rs.15,000/- each	-	Rs.30,000-00
2) One simple injury	-	Rs. 5,000-00
3) Shock, Pain and suffering and loss of amenities in life	-	Rs. 5,000-00
4) Extra-nourishment	-	Rs.20,000-00
5) Medical expenses	-	Rs. 9,500-00
6) Transportation	-	Rs. 5,000-00
7) Damages to clothes	-	Rs. 1,000-00
8) Loss of temporary earnings	-	Rs. 8,000-00

Rs. 83,500-00

15. Thus, the claimant is entitled to a total compensation of Rs.83,500/- (Rupees eighty three thousand five hundred only) as against Rs.50,500/- awarded by the Tribunal, and the same is accordingly awarded, with interest at 7.5% per annum, on the entire compensation from the date of petition till realisation. Respondent No.2, insurer, is directed to deposit the entire compensation after deducting the amount, if any, deposited, within a period of one (1) month from the date of receipt of a copy of this order. The issue is answered accordingly.

16. Accordingly, the Civil Miscellaneous Appeal is allowed in part modifying the award under challenge and by enhancing the compensation, as indicated above. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal stand closed.

K. LAKSHMAN, J

February 12, 2020.

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