

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.1786 OF 2017

JUDGMENT:

This appeal is filed by the appellant-claimant aggrieved by the order dated 08.02.2017 passed in M.V.O.P.No.1485 of 2014 by the Court of XIII Additional Chief Judge, City Civil Court, Hyderabad (for short, the Tribunal).

2. The brief facts of the case are that on 13.04.2014 at about 7.00 pm., while the appellant was travelling, as a pillion rider, on her son's motorcycle bearing No.AP28DG 3907, and when they reached near Bhagyanagar Colony, a motorcycle bearing No.AP28BX 4409 came in a rash and negligent manner at high speed and dashed the motorcycle of the appellant, due to which, the appellant fell down and sustained fracture injuries and blunt injuries all over the body. She filed aforesaid MVOP against respondents Nos.1 to 2, owner and insurer of aforesaid motorcycle i.e., AP28BX 4409, claiming compensation of Rs.8,50,000/- for the injuries sustained by her.

3. Before the Tribunal, respondent No.1 remained *ex parte*. Respondent No.2 filed 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 driver of the

motorcycle bearing No.AP28BX 4409 and awarded total compensation of Rs.2,85,000/- under various heads with interest @ 7.5% per annum from the date of petition till the date of realization. Dissatisfied with the quantum of compensation, the appellant filed the present appeal, seeking enhancement of the same.

5. Sri K.Hari Mohan Reddy, learned counsel for the appellant, submits that in the accident, the appellant sustained comminuted fracture of right collies, fracture of right wrist joint, fracture sub-laxation of right ankle joint, fracture of right cuboid bone of right foot and fracture of 2nd and 3rd metatarsal bones of right hand, for which, she was operated and inserted implants. To prove the same, the appellant examined P.W.2, the doctor who treated her, who deposed that due to the said injuries, the appellant suffered disability at 25% and also admitted that he issued Ex.A.6-disability certificate to that effect. He further submits that due to the injuries, the appellant was advised to use hand stick and she has difficulty in sitting on the floor, squatting standing and walking for long distances and hence, she is entitled to future prospects. He further submits that when the disability is proved, the Tribunal ought to have granted the compensation by taking into consideration the income of the appellant and the percentage of disability along with future prospects, but the Tribunal, did not grant any amount under that head. He further submits that the other amounts granted by the Tribunal are also meager. Basing on

the above submissions, the learned counsel seeks to enhance the compensation.

6. Sri V.Venkata Rami Reddy, learned Standing Counsel for respondent No.2, submits that the Tribunal passed a well reasoned order by taking into consideration all the aspects and seeks to dismiss the appeal.

7. Insofar as the contention of the learned counsel for the appellant with regard to non-consideration of partial permanent functional disability is concerned, though P.W.2 deposed that due to the said injuries, the appellant suffered disability at 25% and though admitted about the issuance of Ex.A.6-disability certificate, he did not state whether such disability is the functional disability and whether due to the said disability, the appellant cannot continue her profession as a Teacher. Therefore, non-consideration of the functional permanent disability of the appellant by the Tribunal, in the absence of any evidence to that effect, cannot be found fault. However, taking into consideration the evidence of P.W.2 and Ex.A.6, this Court is inclined to grant a sum of Rs.25,000/- towards disability and Rs.10,000/- towards loss of amenities.

8. Coming to the other heads, the Tribunal has granted Rs.1,00,000/- towards injuries, Rs.25,000/- towards medical expenses, Rs.40,000/- towards further operation, Rs.30,000/- towards pain and suffering and mental agony, Rs.40,000/- towards

extra nourishment, travelling and attendant charges and Rs.50,000/- towards loss of earnings, which are reasonable and need no interference.

9. In the result, the Motor Accident Civil Miscellaneous Appeal is partly allowed enhancing the compensation amount awarded by the Tribunal from Rs.2,85,000/- to Rs.3,20,000/-. 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: 10.01.2020
TJMR

T.AMARNATH GOUD, J

