

THE HON'BLE SRI JUSTICE K. LAKSHMAN

M.A.C.M.A. No.2296 OF 2006

JUDGMENT:

Assailing the order and decree dated 17.08.2006 in M.V.O.P. No.564 of 2002, passed by the II Additional District & Sessions Judge (Fast Track Court), Medak at Sangareddy (for short 'the Tribunal'), Claimant filed the present appeal.

2. Vide the aforesaid order, the Tribunal has awarded an amount of Rs.12,000/- towards compensation with proportionate costs and interest at 7.5% per annum thereon from the date of petition till the date of realization against respondent Nos.1 and 2 jointly and severally as against the claim of Rs.2,00,000/- (Rupees two lakhs only) made by the appellant - claimant for the injuries he sustained in a road accident occurred on 20/21-09-2001.

3. Heard Mr. P. Sriharinath, learned counsel for the appellant - claimant and Mr. P. Harinatha Gupta, learned counsel for respondent No.2 - Insurer.

4. The case of the claimant is that on 20/21.09.2001 at about 1:00 hours he along with others was proceeding in an Auto-rickshaw bearing No.AP 23T 7184 driven by its driver in a moderate speed and on correct side from Pothireddipally Cross Roads to go to Sangareddy. When it reached near Anand Arts, lorry bearing registration No.HR 55 4268 driven by its driver in a rash and negligent manner and at high speed came in opposite direction and

dashed the auto-rickshaw, due to which the inmates of the auto-rickshaw received injuries. The claimant was shifted to CDR Hospital, Hyderabad initially and thereafter to Nizam's Institute of Medical Sciences (NIMS) Hospital for treatment. The petitioner sustained fracture of right 4, 5 and 6 ribs, head injury and other injuries all over his body. He was aged 55 years, hale and healthy at the time of accident. He was working as an Electrician and used to earn Rs.5,000/- per month. On account of fracture injuries he sustained in the accident, he suffered mentally and physically and he is unable to do his normal work. He is the only earning member and he has to maintain his family. Thus, he laid the claim under Section 166 of the Motor Vehicles Act, 1988 for an amount of Rs.2,00,000/- under various heads against respondent Nos.1 and 2, who are owner and insurer of the aforesaid accident lorry.

5. Respondent No.1 - Insured remained *ex parte* before the Tribunal.

6. Respondent No.2 - Insurer filed its counter disputing the liability as well as quantum of compensation. According to it, the accident was not due to rash and negligent driving of the driver of the lorry and it occurred only on account of rash and negligent driving of the driver of the auto-rickshaw, and that the compensation claimed by the claimant is on higher side and, therefore, prayed to dismiss the claim petition.

7. On consideration of entire evidence, both oral and documentary, the Tribunal gave a finding that the accident had occurred due to rash and negligent driving of the driver of the lorry. Accordingly, the Tribunal awarded an amount of Rs.12,000/- as compensation to the claimant. It is relevant to note that respondent No.2 - Insurer has not filed any appeal challenging the above said findings and the said finding attained finality. In view of the same, the only question that falls for consideration by this Court in the present appeal is as to whether the Tribunal has erred in awarding only Rs.12,000/- towards compensation as against the claim of Rs.2,00,000/- made by the claimant.

8. It is the specific contention of the claimant that he was aged 55 years, hale and healthy at the time of the accident. He was working as an Electrician and used to earn an amount of Rs.5,000/- per month. On account of accident, he received fractures and other injuries in the manner stated above and frequently receiving pains. He is unable to do his normal work. The claimant filed Ex.A4 - certified copy of medical certificate, Ex.A5 - out patient card of NIMS Hospital, Hyderabad, Ex.A-6 - discharge record issued by the NIMS Hospital, Ex.A-7 - medical bills issued by NIMS Hospital for Rs.3,894/-, Ex.A-8 - medical bills for Rs.1131.40ps., Ex.A9 - medical bill issued by CDR Hospital mentioning the medical service charges under different heads making a total amount of Rs.10,623.55ps., Ex.A10 - medical reports issued by CDR Hospitals, Ex.A11 - CT

Scan of Brain issued by CDR Hospitals and Ex.A12 - bills of NIMS for Rs.356.30ps. During trial, the appellant examined himself as PW.1 and did not examine any other witness including the doctors, who treated him. At the same time, it is also relevant to note that respondent No.2 - Insurer did not choose to examine any witness except filing and marking Ex.B1 - insurance policy.

9. The Tribunal has awarded an amount of Rs.12,000/- towards compensation only by discarding the medical record solely on the ground that the appellant - claimant did not examine the doctors who treated him. The Tribunal held that in Ex.A-4, only two simple injuries are mentioned. The Tribunal further held that PW.1 stated that after discharge from CDR Hospitals, he was admitted in NIMS Hospital for four months and incurred medical expenses of Rs.60,000/- to Rs.80,000/-, but the claimant failed to examine any of the doctors from NIMS Hospital, and filed only Out-patient chit to show that he had taken treatment in NIMS Hospital on 21.09.2000. In Ex.A-5 - Out-patient Card, it is specifically mentioned that “to pay Rs.1000/- and admit in EMD”. As per Ex.A6 - discharge record issued by NIMS Hospital, the claimant was admitted on 22.09.2001 and discharged on 25.09.2001. In view of Exs.A5 and A6, it is clear that the claimant was admitted in NIMS Hospital and having taken treatment up to 25.09.2001, discharged on 25.09.2001. In Ex.A6 under ‘final diagnosis’, it is mentioned by the doctors of the NIMS Hospital that the claimant sustained fracture of right ribs 5, 6 with

collapse of right lower lobe haemopneumothorax and head injury. Under 'clinical summary' it is mentioned that the claimant was initially treated in a private hospital and was brought to NIMS with the injuries (i) sutured laceration 6" frontal scalp and (ii) right knee abrasion and it also discloses about treatment given by the doctors.

10. The Tribunal despite giving a finding that the claimant sustained not only fracture of ribs as stated above, but also other injuries, denied the compensation solely on the ground that the claimant did not examine the doctor who treated him to prove the said injuries by relying upon a judgment of this Court in **UIIC v. Mohd. Khaj Rasool Sayyed @ Mohd. Khaja Main Shaik¹**. But, the said approach of the Tribunal is incorrect. The Tribunal, on one hand held that as per Exs.A4 and A6, the claimant sustained fracture of ribs and other injuries, and on the other hand, denied the compensation as he failed to prove such injuries by examining the doctor who treated him. Therefore, the said findings are self-contradictory. Examination of doctor is only to prove the injuries including fractures, whereas in the case on hand, the documents filed by the claimant would clearly show the nature of injuries, more particularly, fractures and other injuries as referred above. Therefore, denial of compensation to the claimant only on the ground that non-examination of doctor is incorrect.

11. The Tribunal has awarded only an amount of Rs.2,000/- towards medical expenses. But, as per Ex.A7 medical cash receipts

¹. 2003 (5) ALD 162 (AP)

issued by the NIMS Hospital, an amount of Rs.3,894/- was spent by the claimant towards medicines and, therefore, the claimant is entitled for the said amount. Like-wise, an amount of Rs.1131/- as per medical bills under Ex.A8 and an amount of Rs.10,623/- towards hospital charges etc. under Ex.A9 and, therefore, the same are also awarded. Thus, an amount of Rs.15,648 rounding it off to Rs.16,000/- is awarded towards medical expenses.

12. The Tribunal has awarded an amount of Rs.8,000/- towards injuries, but in view of the aforesaid discussion and in view of the fact that the claimant sustained fracture injuries as mentioned above, the said amount is very meager and, therefore, the same is enhanced to Rs.25,000/-. Another sum of Rs.10,000/- is granted towards head injury and other injuries sustained by the claimant.

13. The Tribunal also awarded an amount of Rs.2,000/- towards mental agony. As already discussed supra, that the Tribunal has sustained fracture injuries, head injury and other injuries and the fracture injuries are grievous in nature and the claimant must have suffered for a considerable period. Therefore, the said amount is also enhanced to Rs.15,000/- towards pain and suffering.

14. Except the aforesaid amounts, the Tribunal did not award any amount under other heads on the ground of not proving the same by examining relevant witnesses. The Apex Court time and again held that the M.V. Act is a beneficial legislation and liberal approach to be maintained while granting compensation under the Act. In the

said circumstances and considering the nature of fractures and injuries sustained by the claimant, an amount of Rs.15,000 is awarded towards extra nourishment. The claimant had taken treatment in two different hospitals as in-patient and thereafter he must have taken treatment as out-patient for which some amount must have spent on transportation. Therefore, an amount of Rs.5,000/- is awarded towards transportation.

15. It is contended by the claimant that at the time of accident, he was an electrician and used to earn an amount of Rs.5,000/- per month, whereas in the charge sheet and other record, his occupation is shown as 'business'. However, in the cause title of claim petition, the claimant has shown his occupation as 'Electrician'. The accident took place in the year 2000. Though the claimant did not file any documentary evidence to prove his income, but keeping in view the nature of occupation of the claimant, it can safely be concluded the monthly earning capacity of the claimant as Rs.4,500/-. On account of fracture injuries sustained by the claimant, he must not have attended the work for a considerable period of three (03) months. Therefore, an amount of Rs.13,500/- (Rs.4,500/- x 3) is awarded towards loss of past earnings. The appellant is also entitled for an amount of Rs.1,000/- towards damages to clothes. Thus, in all, the petitioner is entitled to Rs.90,500/- as compensation as against the amount of Rs.12,000/- awarded by the Tribunal under the following heads.

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| i) Fractures | .. Rs. 25,000-00 |
| ii) Medical Expenses | .. Rs. 16,000-00 |

iii) Pain and suffering	.. Rs. 15,000-00
iv) Extra nourishment	.. Rs. 15,000-00
v) Transportation	.. Rs. 5,000-00
vi) Loss of Past earnings	.. Rs. 13,500-00
vii) Damages to clothing	.. Rs. 1,000-00

Total	.. Rs. 90,500-00

16. As far as rate of interest is concerned, the Tribunal awarded the interest at the rate of 7.5% per annum. The same is just and reasonable and, therefore, it is maintained and so also on the enhanced amount.

17. In the result, the appeal filed by the Appellant - petitioner is allowed in part. Accordingly, the order and decree dated 17.08.2006 in M.V.O.P. No.564 of 2002 passed by the Tribunal are modified enhancing the compensation to Rs.90,500/- (Rupees ninety thousand and five hundred only) is enhanced from Rs.12,000/-(Rupees twelve thousand only) with interest at the rate of 7.5% per annum thereon from the date of petition till realization. The respondent No.2 - Insurer is directed to deposit the above said amount with interest and costs after deducting the amount, if any, deposited earlier within one month from the date of receipt of certified copy of this judgment. There shall be no order as to costs.

As a sequel, Miscellaneous Applications, if any, pending in the appeal shall stand closed.

K. LAKSHMAN, J

06th February, 2020
Mgr