

THE HON'BLE SRI JUSTICE K. LAKSHMAN

M.A.C.M.A. No.397 OF 2007

JUDGMENT:

Assailing the judgment and decree dated 24.11.2006 in O.P. No.491 of 2003 passed by the Motor Accidents Claims Tribunal - cum - District Judge, Nizamabad (for short 'the Tribunal'), appellant filed the present appeal.

2. Vide the aforesaid judgment, the Tribunal has awarded an amount of Rs.10,000/- 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 for the injuries he sustained in a road accident occurred on 27.12.2002.

3. Heard Mr. Azar Sravan Kumar, learned counsel for the appellant and Mr. P. Bhanu Prakash, learned counsel for respondent No.2 - Insurer. Despite service of notice on respondent No.1, none appeared.

4. The contention of the appellant is that on 27.12.2002 at about 10.00 a.m., he along with others was travelling in Jeep bearing registration No. AP 25T 5872 from Bodhan to Biloli side, and when it reached Saloora village camp, suddenly the driver drove it in a rash and negligent manner at high speed. Due to the said impact, the petitioner sustained fracture injuries to both bones of right leg, right fore-head, head injury, multiple and grievous injuries on various parts

of the body. He took treatment for the said injuries and spent huge amount towards medicines. He used to earn Rs.6,000/- per month and on account of injuries, he sustained loss of income. Therefore, he filed the claim petition claiming an amount of Rs.2,00,000/- as compensation against respondent Nos.1 and 2 jointly and severally.

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.

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 jeep. Accordingly, the Tribunal awarded an amount of Rs.10,000/- as compensation to the appellant with interest at 7.5% per annum therein. 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 quantum of compensation.

8. It is the contention of the appellant that due to the accident, he sustained fracture injuries and he incurred an amount of Rs.50,000/- towards treatment. To prove the said injuries, the appellant examined himself as PW.1 and also examined the doctor who treated him as PW.2. The appellant has also filed Ex.A3 - wound certificate to prove

the injuries sustained by him in the accident. As per Ex.A3 wound certificate and also as per the deposition of PW.1, PW.2 examined the appellant on 27.12.2002 in his private clinic and found i) fracture of both bones and right leg and ii) abrasion over right side of fore-head. According to PW.2, injury No.1 is a grievous one and injury No.2 is simple. Thereafter, according to PW.2, he has issued Ex.A3 - wound certificate. The Tribunal though considered the deposition of PW.2 and Ex.A3 - wound certificate, awarded an amount of Rs.10,000/- towards compensation towards pain and suffering and did not grant any compensation for the grievous injury sustained by the appellant on the ground that the appellant did not file any documentary evidence, such as Photostat copies X-ray films or radiologist's report, case sheet, medical bills or prescriptions of the doctor etc. Admittedly, the appellant did not file any proof with regard to the medical evidence except Ex.A3 - wound certificate. The appellant not only examined himself as PW.1, but also examined the doctor who issued Ex.A3 - wound certificate.

9. As per Ex.A3 - wound certificate, the appellant received one grievous injury i.e., fracture of both bones of right leg and one simple injury i.e., abrasion over right side of fore-head. Therefore, the appellant is entitled for Rs.15,000/- towards grievous injury and Rs.5,000/- towards simple injury. Apart from the same, the appellant is also entitled an amount of Rs.5,000/- towards transportation, Rs.1,000/- towards damage to the clothing.

10. As per Ex.A3 - wound certificate and as per the deposition of PW.2, the accident had occurred on 27.12.2002. PW.2 has treated him on the same day. The appellant claimed that he used to earn Rs.6,000/- per month and used to contribute the same to his family. Admittedly, there is fracture of both bones of his right leg, which is grievous in nature. Therefore, he is entitled for an amount of Rs.4,000/- towards attendant charges @ Rs.2,000/- per month for two months and an amount of Rs.10,000/- towards extra nourishment. The appellant is also entitled for an amount of Rs.6,000/- @ Rs.3,000/- per month for two months towards loss of earnings. Thus, in all the appellant is entitled to Rs.46,000/- as compensation as against the amount of Rs.20,000/- awarded by the Tribunal, under the following heads.

i) Grievous Injury - Fracture	.. Rs. 15,000-00
ii) Simple Injury	.. Rs. 5,000-00
iii) Extra nourishment	.. Rs. 10,000-00
iv) Transportation	.. Rs. 5,000-00
v) Loss of earnings	.. Rs. 6,000-00
vi) Attendant charges	.. Rs. 4,000-00
vii) Damages to clothing	.. Rs. 1,000-00

Total	.. Rs. 46,000-00

11. The Tribunal awarded the interest at the rate of 7.5% per annum, and the same is maintained, and granted even on the enhanced amount.

12. In the result, the appeal filed by the appellant is allowed in part. Accordingly, the judgment and decree dated 24.11.2006 in O.P. No.491 of 2003 passed by the Tribunal are modified enhancing the

compensation to Rs.46,000/- (Rupees forty six thousand only) from Rs.10,000/-(Rupees ten 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 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.

12th February, 2020
Mgr

K. LAKSHMAN, J

