

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. Nos.1290 OF 2013 AND 2278 OF 2014

COMMON JUDGMENT:

Since both these appeals arise out of the same order, they are being disposed of by this common judgment.

2. Appellant-claimant filed MACMA No. 1290 of 2013 and Insurance Company filed MACMA No.2278 of 2014, aggrieved by the Order and Decree dated 19.03.2013 passed in O.P.No.880 of 2009 by the Motor Accident Claims Tribunal-cum-I-Additional Metropolitan Sessions Judge-cum-XV Additional Chief Judge, Hyderabad (for short, the Tribunal).

3. For the sake of convenience, the parties shall be referred to as they are arrayed in MACMA No. 1290 of 2013.

4. The brief facts of the case are that on 17.01.2009, while the appellant and his relative were proceeding on a Hero Honda motorcycle to Vemmulakonda Temple, and after passing IDL Factory, Ramannapet Village, a lorry bearing No.HR38M 7289, driven by its driver in high speed and in rash and negligent manner, dashed the motorcycle. In the said accident, the appellant fell down and sustained fractures and multiple injuries. The claimant filed the aforesaid OP against respondent Nos.1 and 2, owner and insurer of lorry, respectively, claiming compensation of Rs.5,00,000/- for the injuries sustained by him.

5. Before the Tribunal, respondent No.1 remained *ex parte*. Respondent No.2 filed its counter denying the averments of the claim petition and contended that the amount claimed is excessive and prayed to dismiss the claim petition.

6. 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.1,95,035/- under various heads, with interest at the rate of 7.5% per annum. Dissatisfied with the quantum of compensation, the Appellant-claimant filed MACMA No. 1290 of 2013, while the Insurance Company filed MACMA No.2278 of 2014, stating that the compensation awarded by the Tribunal is excessive.

7. When the appeals are coming up for final hearing, the Appellant-claimant filed MACMAMP.No.780 of 2016, seeking to receive the disability certificate dated 12.01.2015, issued by the Medical Board, Nalgonda, in the name of the claimant and mark the same as Ex.A15 as additional evidence. It is further stated that the disability certificate was not available with the claimant during the pendency of OP and hence, he could not file the same before the Tribunal. He prays to receive the same as additional evidence.

8. The accident in the present case had occurred on 17.01.2009 and OP was filed in the year 2009 itself and the same was disposed of on 19.03.2013. The claimant had pretty long time to obtain the disability certificate and could not file the same during the

pendency of the OP. The claimant has not stated anything in the affidavit filed by him for the delay caused in obtaining the disability certificate. It is to be noted that documents cannot be received at the stage of arguments and mark the same as exhibits without examining the author of the document and without giving opportunity to other side for cross examining the said witness. Therefore, this Court is not inclined to receive the disability certificate filed by the claimant. However, as the Motor Vehicles Act is a beneficial legislation, and not to deprive the genuine claim of the claimant and equally not to deprive the right of cross-examination by the Insurance Company, this Court feels that it is appropriate to remand the matter to the Tribunal for considering the disability certificate, which the appellant wants to file before this Court.

9. Accordingly, both the appeals are disposed of and the matter is remanded to the Tribunal for fresh disposal by considering the disability certificate by giving reasonable opportunity to both sides. The Tribunal is at liberty to consider the aspect whether the said certificate can be taken into account at a belated stage. Miscellaneous petitions pending, if any, shall stand closed. No costs.

T.AMARNATH GOUD, J

Date: 07.01.2020
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