

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.1999 OF 2015

JUDGMENT:

This appeal is filed by the appellant-claimant aggrieved by the Order and Decree dated 01.10.2010 passed in M.V.O.P.No.548 of 2009 by the Motor Accidents Claims Tribunal (District Judge), at Khammam (for short, the Tribunal).

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

3. The brief facts of the case are that on 15.10.2008 at about 3.00 p.m., the petitioner and others were proceeding in auto bearing No.AP-20-Y-1719 from Korivi (V) to Khammam and when they reached near Valiya Thanda, the driver of another auto bearing No.AP-20-Y-0866 came in a rash and negligent manner and dashed against the auto in which the petitioner was travelling, due to which the petitioner sustained fracture and grievous injuries on his right leg, that immediately he was shifted to Government Hospital, Khammam, and thereafter for better treatment, he was taken to Dr.Madan Singh Hospital, that he was operated and steel rod was inserted, that the petitioner spent Rs.75,000/- for medical expenses, that prior to the date of accident, the petitioner was hale and healthy earning Rs.200/- per day. Hence, the appellant filed the present claim petition claiming a compensation of Rs.3,00,000/-, payable by both the respondents, being the owner and insurer of the offending auto.

4. Before the Tribunal, the 1st respondent remained *ex parte*. The 2nd respondent filed counter denying the averments of the claim petition and contended that the amount claimed is excessive and prayed to dismiss the claim petition.

5. 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 offending auto and awarded total compensation of Rs.1,00,000/- i.e., Rs.50,000/- towards medical expenses, Rs.25,000/- towards pain and suffering and Rs.25,000/- towards loss of earnings, with interest @ 7.5% per annum from the date of petition till the date of realization and the 1st respondent alone is liable to pay the said amount and the claim petition against the 2nd respondent was dismissed by Tribunal by holding that since the driver of the offending auto was possessing licence to drive the auto rickshaw of non-transport description and when the accident took place he was found to be driving the auto, with passengers, which has a seating capacity of 7 persons, but he was not authorized as per Ex.B-2-licence and there is clear breach in terms of the contract of insurance in between the 1st respondent and the 2nd respondent/insurance company and therefore, the 2nd respondent cannot be held liable to indemnify the insured. Dissatisfied with the quantum of compensation, the appellant filed the present appeal seeking enhancement of the same.

6. Heard Sri K.Prabhakara Rao, learned counsel appearing for the appellant and Sri A.Rama Krishna Reddy, learned standing counsel appearing for the 2nd respondent/insurance company. Perused the material record.

7. Admittedly, P.W.2-Medical officer deposed in his evidence that he performed the surgery under emergency conditions and plate was inserted and due to the fracture, there was one inch shortening of leg, due to which the petitioner was constrained to limp, which would be there for his life long. Therefore, in the absence of any disability certificate, this Court is not inclined to grant any compensation under the head of loss of disability. However, with regard to limping, which is caused due to the shortening of the leg is concerned, this Court finds that it would be just and appropriate if an amount of Rs.10,000/- is granted under the head of deformity, Rs.2,000/- under the head of extra nourishment, Rs.6,000/- under the head of attendant charges @ Rs.100/- per day for sixty days (Rs.100/- x 60 days). The amounts awarded by the Tribunal under other heads remain unchanged. Therefore, the total compensation comes to Rs.1,18,000/- (Rs.1,00,000/- + Rs.10,000/- + Rs.2,000/- + Rs.6,000/-).

8. With regard to the liability of payment of compensation is concerned, since the offending auto is insured with the 2nd respondent/insurance company and the driver of the offending auto though holding licence under one form, was not holding

transport driving licence, but as per the decision of the Hon'ble Supreme Court reported in **Minu Rout and another v. Satya Pradyumna Mohapatra and others**¹, the insurance company is liable to pay the compensation amount, as the offending vehicle is insured with it and the same is an undisputed fact. Except the above modification, rest of the award passed by the Tribunal remains unchanged.

9. In the result, the Motor Accident Civil Miscellaneous Appeal is partly allowed by enhancing the compensation amount awarded by the Tribunal from Rs.1,00,000/- to Rs.1,18,000/- payable by both the respondents jointly and severally. The enhanced amount shall carry interest @ 7.5% per annum from the date of petition till realization. The respondents are directed to deposit the enhanced amount along with proportionate costs and interest within two (02) months from the date of receipt of a copy of this order. On such deposit, the appellant is permitted to withdraw the entire amount. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 8th January, 2020

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¹ 2013 ACJ 2544