

THE HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A.No.3450 of 2014

JUDGMENT:

The claimant preferred this appeal under Section 173 of Motor Vehicles Act, aggrieved by the order and decree, dated 26.07.2014 passed in M.V.O.P.No.293 of 2010 on the file of the Motor Accident Claims Tribunal-cum-I Additional District Judge at Nizamabad (for short "the Tribunal").

2. For the sake of convenience, hereinafter, the parties are referred to as per their array before the tribunal.

3. Brief facts of the case are that the claimant filed a petition under Section 163-A of the Motor Vehicles Act, 1988 claiming compensation of Rs.2,00,000/- for the injuries sustained by him in the motor vehicle accident that occurred on 18.09.2007. It is stated that on 18.09.2007, while the claimant was discharging duties as conductor in the offending bus bearing No. AP 28Z 1040, owned by the respondents-RTC, when the bus reached in front of IBP Petrol Pump, Bibipur Thanda, the driver of the bus while overtaking a vehicle, dashed a road side neem tree, as a result of which, he had sustained multiple injuries. According to him, towards treatment and medicines, he had incurred an amount of

Rs.60,000/- and that he suffered permanent disability. Therefore, he laid the claim for Rs.2.00 lakhs against the respondents-RTC towards compensation under different heads.

4. Considering the claim, counter filed by the respondents and also the oral and documentary evidence brought on record, the tribunal allowed the O.P. in part awarding a sum of Rs.55,000/- towards compensation with interest at 7.5% per annum, to be paid by the respondents jointly and severally. Challenging the same, the claimant filed the present appeal seeking enhancement of compensation.

5. Heard both sides and perused the record.

6. The learned Counsel for the appellant submits that though the claimant has suffered grievous injury and underwent surgery for the fracture of both bones of left fore arm for fixation of implants, the tribunal has awarded Rs.30,000/- towards pain and suffering and trauma; Rs.20,000/- towards medical, hospital expenses, extra nourishment and attendant charges and Rs.5,000/- for implants costs which are meagre and needs enhancement. It is contended that the tribunal did not award any

amounts under the head of injuries even though the fracture injuries received by the claimant are grievous in nature.

7. Learned Standing Counsel appearing for the respondents-RTC has submitted considering the nature of injuries and the treatment period the Tribunal has awarded just compensation, which needs no interference by this Court.

8. With regard to the manner in which the accident took place, a perusal of the impugned judgment discloses that although the claim petition was filed under Section 163-A of the Motor Vehicles Act, the Tribunal has framed issue No.1 as to whether the accident occurred due to the rash and negligent act on the part of the driver of crime vehicle, to which the tribunal after considering the evidence of P.W.1 coupled with the documentary evidence i.e., Ex.A1, FIR and Ex.A2, charge sheet, has categorically observed that the accident occurred due to the rash and negligent driving of the crime vehicle by its driver and has answered the issue in favour of the claimant and against the respondent. Therefore, I see no reason to interfere with the finding of the Tribunal that the accident occurred due to the rash and negligent driving of the crime vehicle by its driver. Basing on the findings on issue No.1,

the tribunal has proceeded to award the compensation treating the claim petition as was filed under Section 166 of the Act.

9. Insofar as the quantum of compensation is concerned, the claimant was admitted as inpatient on 18.09.2007, he had underwent major operation on 26.09.2007 and was discharged on 01.10.2007. Ex.A.3, Injury Certificate, discloses that the claimant suffered fracture of both bones of left fore arm. Ex.A.3 is substantiated with the evidence of the doctor, P.W.2 who also deposed that to heal the fracture, implants were fixed. Considering the said medical evidence, though the tribunal has rightly awarded Rs.30,000/- towards pain, suffering and trauma, but did not justify in not awarding any amount under the head of injuries. Therefore, considering the fracture of both bones to left forearm, this Court grants an amount of Rs.25,000/- under the head of injuries. That apart, the amount of Rs.5,000/- awarded by the tribunal for implants is enhanced to Rs.10,000/-. However, this Court is not inclined to disturb the amount of Rs.20,000/- awarded by the tribunal under the head of medicines, transportation, extra nourishment and attendant charges. Even though the claimant claimed that he had suffered permanent disability, in the absence of any evidence to that effect, the tribunal

has rightly rejected the said claim. Thus, in all, the compensation amount of Rs.55,000/- awarded by the tribunal is enhanced to Rs.85,000/-.

10. Accordingly, the M.A.C.M.A. is allowed in part enhancing the compensation awarded by the tribunal from Rs.55,000/- to Rs.85,000/-. The enhanced compensation amount shall carry interest at 7.5% p.a. from the date of the petition till the date of realization, payable by respondents. The amount shall be deposited within a period of one month from the date of receipt of a copy of this order. On such deposit of compensation amount by the respondents, the claimant is at liberty to withdraw the same without furnishing any security. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

SMT. M.G.PRIYADARSINI, J

02.12.2022

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DATE: 02-12-2022