

THE HON'BLE SRI JUSTICE PULLA KARTHIK

M.A.C.MA. No.2039 of 2007

JUDGMENT:

The appeal is filed by the claimant challenging the order and decree passed in O.P. No. 487 of 2003 dated 08-05-2007 on the file of IV Additional District & Sessions Judge Fast Track Court, Ranga Reddy District, wherein the Tribunal had awarded a compensation of Rs.60,000/- as against the claim of Rs.4,00,000/- for the injuries sustained by the petitioner in a motor vehicle accident that occurred on 17.06.2003.

2. The case of the appellant in brief:

On 17-06-2003 at about 7.00 A.M., while he was proceeding on his Motor Bike bearing No. AP 28A 3449 from his house to Kings Way, on the way when he reached opposite to Swimming Pool, S.P.Road, Secunderabad, one auto bearing No. AP 29T 157, driven by its driver, came at high speed, in a rash and negligent manner without following the rules and hit his vehicle from behind the back

of it and in that accident he sustained injuries. It is pleaded that by reason of the injuries he retired from the services from Navy voluntarily and therefore lost the future prospects.

3. The 1st respondent who is owner of the auto remained ex parte before the Tribunal.

4. The 2nd respondent insurance company filed its counter before the Tribunal denying the averments in the petition.

5. Basing on the above pleadings the following issues are framed by the Tribunal:

1. Whether the accident occurred due to the rash and negligent driving of the vehicle bearing No. AP 29T 157 (Auto)?
2. Whether the accident vehicle was insured with R2 and there is any violation of policy conditions?

3. Whether the petitioner is entitled for any compensation, if so, from whom and to what extent?

6. To prove his claim, the petitioner examined himself as PW1 and marked Exs.A1 to A14. In support of his case, the petitioner examined the doctor, who treated him, as PW2.

7. On behalf of the 2nd respondent, Ex.B1 policy was marked.

8. On considering the evidence and material on record the Tribunal was pleased to award compensation of Rs.60,000/- with interest at 7.5% per annum from the date of the petition till the date of deposit as stated under:

- | | |
|-----------------------|-------------|
| 1. Treatment | Rs.25,000/- |
| 2. Loss of bike | Rs.12,000/- |
| 3. Pain and suffering | Rs.20,000/- |
| 4. Transportation | Rs.3,000/- |

Total Rs.60,000/-

9. Heard both sides and perused the record.

10. The appellant contends that Tribunal grossly erred in attributing contributory negligence to the appellant herein, in the absence of any evidence to that effect. It is further contended that the evidence on record clearly shows that the driver of the auto drove the vehicle in rash and negligent manner and hit the motor cycle of the appellant by which the appellant sustained fractures and other injuries.

11. It is further contended that the Court below grossly erred in awarding meagre compensation of Rs.20,000/- towards pain and suffering.

12. In contra, the respondents contend that the Tribunal had rightly passed an award basing on the oral evidence and material on record. It is further contended that there is no error in the order of the Tribunal and requested to dismiss the appeal.

13. This court has taken note of the submissions made by the respective parties.

14. The Tribunal relying on Ex.A1 i.e. copy of FIR held that the auto is not the only instrument in occurrence of the accident. In the occurrence of the accident, the petitioner is also an instrument to some extent and held that the petitioner and the driver of the first respondent are equally responsible in occurrence of the accident.

15. The Tribunal had not justified in holding that the petitioner/appellant is equally responsible for the occurrence of the accident only on the basis of the averments made in Ex.A1. As can be seen from the record, there is no rebuttal evidence adduced by the first respondent or second respondent contradicting the evidence of PW1. Hence, this court holds that the accident was occurred due to the rash and negligent driving of the first respondent only.

16. According to PW2, i.e. Doctor who treated the appellant in Apollo hospital, the bills covered under Ex.A6

were issued by Apollo hospital. Hence, this court holds that the appellant is entitled to Rs.21,247/- towards medical expenditure. As per record, the petitioner received fracture to both the bones of his left leg and not only fractures but also restricted movements for a considerable period would definitely cause much physical pain to the appellant.

17. In view of the above, the compensation of Rs.20,000/- towards pain and suffering is enhanced to Rs.50,000/- and the compensation of Rs.3,000/- towards transportation is enhanced to Rs.5,000/-. In view of the fractures of the left leg, the appellant would have taken bed rest for two months. Hence, the appellant is entitled to two months salary towards loss of income. According to PW1 prior to the accident the appellant used to earn Rs.25,000/- per month as salary. In the cross examination, he deposed that at present he is working as software engineer and getting Rs.11,00,000/- per annum. As per Ex.A9 pay slip for the month of April 2003 @ Rs.25,000, the appellant is entitled to Rs.50,000/- towards loss of income @ 25,000/- per month as under:

1.	Treatment	Rs.25,000/-
2.	Loss of bike	Rs.12,000/-
3.	Pain and suffering	Rs.50,000/-
4.	Transportation	Rs.5,000/-
5.	Loss of income	Rs.50,000/-
	Total	Rs.1,42,000/-

18. With the above modification the appeal is disposed of and the compensation amount is enhanced from Rs.60,000/- to Rs.1,42,000/- with interest at 7.5% p.a. from the date of petition till the date of payment. There is no order as to costs.

Pending miscellaneous petitions, if any, in this MACMA shall stand closed.

JUSTICE PULLA KARTHIK

Date: 21-10-2022
ASR