

HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A. No.25 of 2016

JUDGMENT:

Not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal-cum-II Additional Chief Judge, City Civil Courts, Hyderabad, in O.P. No.1446 of 1995, dated 21.01.2015, the present appeal is filed by the claimant seeking enhancement of compensation.

2. According to the petitioner, on 23.01.1995 at about 14-15 hours the petitioner was proceeding on motorcycle bearing No. ADL 1651 as a pillion rider and the lorry bearing No. APJ 2605 was going ahead of them and the driver of said lorry drove it in a rash and negligent manner and applied sudden brakes, due to which, the rider of the motorcycle could not control the vehicle and gave dash to the lorry from the back side and the petitioner sustained grievous injuries. Immediately he was shifted to Government Hospital at Mancherial and from there he was referred to NIMS, Hyderabad where he took treatment, underwent operation and one of his testicles was removed and as such, he sustained permanent disability. Further he incurred

Rs.50,000/- towards his treatment and medicines. According to the petitioner, he is working at Brothers Vegetable Company at Monda Market, Secunderabad and used to earn Rs.2,000/- per month apart batta at Rs.10/- per day. Thus, he is claiming compensation of Rs.3,00,000/- under various heads against the respondent Nos.1 to 4, who are owner and insurer of lorry and motorcycle respectively, jointly and severally.

3. Respondent Nos.1 and 3 remained ex parte; Respondent No.2 filed counter disputing the manner of accident and the nature of injuries sustained by the petitioner. It is further contended that the accident occurred due to the rash and negligent driving of the rider of the motorcycle and not due to the rash and negligent driving of the driver of the lorry and therefore, prays to dismiss the petition.

4. Respondent No.4 filed counter disputing the manner of accident and the nature of injuries sustained by the petitioner. It is further contended that there is contributory negligence on both the vehicles. and prays to dismiss the petition.

5. Based on the above pleadings, the Tribunal framed the following issues:

1. *Whether the accident took place on the fateful day due to rash and negligent driving of the driver of the first respondent?*
2. *Whether the respondents 1 and 2 are liable to pay the compensation?*
3. *Whether the third respondent is liable to pay the compensation?*
4. *Whether the fourth respondent is liable to pay the compensation?*
5. *Whether the petitioner is entitled for compensation, if so, to what amount and from whom?*
6. *To what relief?*

6. In order to prove the issues, PWs.1 to 3 were examined and Exs.A1 to A13 got marked on behalf of the petitioner. On behalf of respondent No.2, RW-1 was examined and Ex.B1 got marked. On behalf of respondent No.4, no witnesses were examined and Ex.B2 got marked. After hearing both sides, the Tribunal passed the Order on 9.8.1999 dismissing the claim petition and aggrieved by the same, the petitioner filed CMA No.3296 of 1999 which was allowed on 21.11.2008 setting aside the orders passed by the Tribunal and

remanded the matter back to the Tribunal for fresh determination on merits in accordance with law after giving a reasonable opportunity to both parties to adduce such further evidence and after that the petitioner examined Dr.Ch.Ram Reddy as PW.4 and Exs.A14 to A17 marked. Thereafter the petitioner filed I.A.No.1053 of 2013 to convert the claim petition under Section 166 of Motor Vehicles Act into Section 163-A of Motor Vehicles Act and accordingly, the said petition is allowed. Since the claim petition is converted into Section 163-A of Motor Vehicles Act, point No.1 is re-casted as follows:

“Whether the accident took place on the fateful day causing injuries to the petitioner in the motor accident with the motorcycle bearing No. ADL 1651 and lorry bearing No. APJ 2605?

7. Considering the oral and documentary evidence available on record, the Tribunal has awarded an amount of Rs.1,37,621/- towards compensation to the appellant-claimant along with costs and interest @ 7.5% per annum from the date of petition till the date of deposit of amount against the respondent Nos.1 and 2 jointly and severally and dismissed the claim against the respondent Nos.3 and 4.

8. Heard the learned counsel for the appellant-claimant, learned Standing Counsel for the respondent No.2-Insurance Company and the learned Standing Counsel for the respondent No.4-Insurance Company . Perused the material available on record.

9. The learned counsel for the appellant-claimant has submitted that although the claimant established the fact that the accident occurred due to the rash and negligent driving of the driver of the lorry, who overtook them and swerved suddenly to its left and dashed to the motorcycle and the petitioner has sustained grievous injuries in the accident, the Tribunal awarded very meager amount of Rs.1,37,621/- under various heads.

10. The learned Standing Counsel appearing on behalf of respondent No.2-Insurance Company sought to sustain the impugned award of the Tribunal contending that considering the manner of accident and the nature of injuries sustained by the petitioner, the learned Tribunal has awarded reasonable compensation and the same needs no interference by this Court.

11. The learned Standing Counsel appearing on behalf of respondent No.4-Insurance Company sought to sustain the impugned award of the Tribunal contending that considering the manner of accident and the nature of injuries sustained by the petitioner, the learned Tribunal has awarded reasonable compensation against the respondent Nos.1 and 2 and the same needs no interference by this Court.

12. Here it is pertinent to state that originally the claim petition filed under Section 166 of Motor Vehicles Act 1989, later it was converted into Section 163-A of Motor Vehicles Act. But the tribunal without assigning any reason decided the issue in favour of the petitioners and against the respondent Nos.1 and 2, who are owner and insurer of the lorry. However, the Tribunal after considering the evidence of PW-2 who stated that the lorry overtook them and swerved suddenly to its left and dashed to the motorcycle due to which himself and PW.1 fell down and received injuries, can consider Section 166 instead of Section 163-A of Motor Vehicles Act. In ***Bhupati Prameela and others vs. Superintendent of Police,***

Vizianagaram and others¹, the Division Bench of this Court held as under:

“ Thus it appears that it is the duty of the Courts to do justice to the parties and while doing justice, if the technicalities come in the way, much importance need not be given to these technicalities because, ultimately, justice has to be done to the parties. Moreover, when sub-section(4) of Section 166 of the Act envisages that the Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of Section 158 of the Act as an application for compensation under the Act, there is nothing wrong in treating an application filed under Section 163-A of the Act as an application under Section 166 of the Act. In view of the above and considering the object of the Act, we are of the view that the petition filed under Section 163-A of the Act can be treated as an application under Section 166 of the Act.”

In view of the above Judgment of the Division Bench of this Court, the petition filed under Section 163-A of the Motor Vehicles Act can be treated as an application under Section 166 of the Motor Vehicles Act.

13. With regard to the manner of accident, after evaluating, rightly held that since the claim petition is filed under Section 163-A of Motor Vehicles Act, there is no necessity to prove the rash and negligent driving on the part of driver of both the vehicles and the petitioner is entitled for compensation from the respondent Nos.1 and 2 who are the owner and insurer of the lorry.

14. Coming to the quantum of compensation, according to the petitioner/PW-1, he received grievous injuries and he was shifted to

¹ (2011) 10 SCC 756

Government Hospital at Mancherial, where he underwent operation in his stomach and from there he was referred to NIMS, Hyderabad where he took treatment, underwent four operations and plastic surgery was done for his lost testicle and he spent Rs.1,50,000/- for his treatment and medicines. Further it is stated by PW-1 that he sustained fracture of backbone and also front bone and also damage to his urinary bladder and due to the injuries, he lost his sexual life to some extent. One Dr.Ch.Ram Reddy, the Assistant Professor of Urology in NIMS, Panjagutta, Hyderabad was examined as PW-4 and he deposed that on 24.1.1995 PW-1 was admitted in NIMS with a history of road traffic accident on 23.1.1995 with multiple wounds, lacerations supra pubic, growing region, scrotal skin aversion and fracture of pelvis for which wound debridement, skin grafting and urinary diversion was done by way of operation on 25.1.1995 and on 1.2.1995 and he was treated by Dr.A.Muralikrishna, the Associate Professor of Urology and the petitioner was discharged on 5.4.1995 and it is grievous in nature. He issued Ex.A9 which shows that the petitioner lost one scrotum. Considering the nature of injuries sustained by the petitioner and the treatment taken by him, the Tribunal awarded compensation of Rs.1,37,621/- under various heads,

which is very less. Further PW-3 one Saleemuddin deposed that he was doing vegetable business under the name and style of 'Bharath Vegetable Company' at Karimnagar and the petitioner worked in their shop from 1992 to 1995 and he was being paid Rs.3,000/- per month towards his salary. Therefore, considering the evidence of PWs.1 to 4 coupled with the documentary evidence, this Court is inclined to grant compensation to the petitioner as mentioned below:

1. Two grievous injuries	: Rs.60,000-00(30,000/-for each grievous injury
2. Three simple injuries	: Rs.15,000-00 (5,000/- for each simple injury)
3. Medical expenses	: Rs.30,000-00
4. Loss of marital life	: Rs.60,000-00
5. Pain and sufferance	: Rs.60,000-00
6. Extra nourishment, attendant And transport charges	: Rs.39,000-00
7. Loss of income for one year	: Rs.36,000-00 @ Rs.3,000/- per month
Grand total:	----- : Rs.3,00,000-00 -----

Thus in all the petitioner is awarded Rs.3,00,000-00 under all counts.

15. With regard to the liability, the Tribunal rightly fixed the liability against the lorry and held that the respondent Nos.1 and 2, who are owner and insurer of the lorry are jointly and severally liable to pay compensation to the petitioner.

16. In the result, the M.A.C.M.A. is allowed by enhancing the compensation amount awarded by the Tribunal from Rs.1,37,621/- to **Rs.3,00,000/-**. The enhanced amount shall carry interest at 7.5% p.a. from the date of petition till the date of realization, payable by respondent Nos. 1 and 2 jointly and severally. 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. The petition against respondent Nos.3 and 4 shall stand dismissed. No costs.

Miscellaneous petitions, if any pending, shall stand closed.

M.G.PRIYADARSINI,J

15.12.2022
pgp