

THE HONOURABLE SRI JUSTICE A.SANTHOSH REDDY

M.A.C.M.A.No.2329 OF 2016

JUDGMENT:

This appeal is directed against the award dated 27.01.2016 in M.V.O.P.No.828 of 2012, on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I-Additional District Judge, Nizamabad (for short 'the Tribunal'), wherein the said claim application filed by respondent No.1 herein seeking compensation was allowed-in-part, awarding compensation of Rs.2,40,000/- as against the claimed amount of Rs.4,00,000/- with interest @ 7.5% per annum from the date of petition.

2. Heard learned counsel for the appellant and learned counsel for the respondent. Perused the material on record.

3. Respondent No.1 herein filed a claim application seeking compensation of Rs.4,00,000/- for the injuries sustained by him in a motor vehicle accident that occurred on 17.09.2012 at about 02:00 PM near Sujatha Nursing Home, Khaleelwadi, Nizamabad. According to the claimant, on that day, the claimant was proceeding on his motorcycle and when he reached Sujatha

Nursing Home, Khaleelwadi, Nizamabad at about 02:00 P.M., the driver of the Honda City Car bearing No. AP 25 L 5445 came from behind the claimant and overtook him and stopped the car and opened the door. In the meantime, the claimant's bike dashed against the door of the car, as a result of which he fell down and sustained injuries. The claimant was shifted to Maithri Hospital, Nizamabad, where he was treated and later shifted to KIMS Hospital, Hyderabad where he underwent surgery. On a complaint, Traffic Police, Nizamabad registered a case in Cr.No.177 of 2011 against the driver of the crime vehicle for the offence punishable under Section 338 IPC. Prior to the accident, the claimant was hale and healthy and was earning Rs.15,000/- per month.

4. Respondent No.2-owner of the car and the appellant-insurer filed separate counters opposing the claim and denying their liability to pay the compensation.

5. Based on the above pleadings, the Tribunal settled the following issues for trial:

“(1) Whether accident occurred on 17.09.2011 at about 2:00 PM at Sujatha Nursing Home, Khaleelwadi, Nizamabad, due to rash and negligent riding of Honda City Car No.AP25L5445 by its rider?

- (2) Whether the petitioner received injuries in that accident?
- (3) Whether the petitioner is entitled for compensation? If so, to what amount and from which respondent?
- (4) To what relief?"

6. During the course of trial, P.Ws.1 and 2 were examined and Exs.A1 to A11 were marked on behalf of the claimant. None were examined and no documents were marked on behalf of the appellant-insurer.

7. On a consideration of the evidence available on record, the Tribunal held that the accident occurred due to the rash and negligent driving of the car by its driver. The Tribunal further held that the claimant was entitled for a total compensation of Rs.2,40,000/- with interest at 7.5% per annum. Aggrieved by the same, the appellant-insurer filed the present appeal.

8. Learned counsel for the appellant-insurer would contend that the Tribunal erred in taking the disability of the claimant at 25% and granting a sum of Rs.1,00,000/- towards the toe amputation, but failed to note that as per the schedule, the disability for the

loss of a toe, other than the great toe, is only 3%. The Tribunal failed to note that the alleged accident occurred due to the negligence on the part of the claimant and the award of compensation is on higher side.

9. On the other hand, the learned counsel for the respondent-claimant would contend that the Tribunal had rightly appreciated the evidence in proper perspective and awarded just compensation and the same does not suffer from any illegality.

10. A perusal of the record would disclose that the finding of the Tribunal that the accident occurred due to the rash and negligent driving of the car by its driver is not seriously disputed. The appellant counsel mainly contended that the Tribunal ought not to have granted Rs.1,00,000/- towards disability to the toe amputation, as the loss of toe, other than great toe, is only 3%. Admittedly, the claimant had not filed any disability certificate against the fracture injuries sustained by him. It is not in dispute that the claimant sustained fracture injury to Grade III of proximal phalanx of 3rd toe right and fracture of 3rd metatarsal head right, as per the injury certificate Ex.A3. It is also not in dispute that the

disability appears to be not as arrived by the Tribunal at 25%. Therefore, the amount of Rs.1,00,000/- awarded towards disability is hereby set aside. However, the claimant sustained two grievous injuries and the Tribunal awarded Rs.40,000/-. In the facts and circumstances and on considering the medical and oral evidence of the claimant, the said amount is increased to Rs.80,000/-. The claimant stated that he was earning Rs.15,000/- per month as private employee. Admittedly, the claimant has not filed any proof of the income. However, the claimant might have suffered loss financially not less than 3 to 4 months for the fracture injuries sustained by him. Therefore, an amount of Rs.20,000/- awarded towards loss of income is enhanced to Rs.40,000/-. The Tribunal has awarded an amount of Rs.10,000/- towards extra nourishment and the same is enhanced to Rs.25,000/-. Further, the award Rs.55,000/- towards medical expenses and purchase of medicines and Rs.15,000/- towards transportation is considered to be just compensation and does not call for any interference and the same is hereby confirmed.

11. Thus, in all, the claimant is entitled for total compensation amount of Rs.2,15,000/- (Rs.80,000/- + 40,000/- + 25,000/- + 55,000/- + 15,000/-) with interest at 7.5% per annum from the date of petition. The impugned award is modified accordingly.

12. In the result, appeal is allowed-in-part to the extent stated above. There shall be no order as to costs.

13. Pending miscellaneous petitions, if any, stand closed.

A.SANTHOSH REDDY, J

01.11.2022

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