

THE HON'BLE JUSTICE G. SRI DEVI

M.A.C.M.A. No.1470 of 2010

JUDGMENT:

This appeal is filed by the appellant/claimant aggrieved by the judgment and decree, dated 09.03.2010 passed in O.P.No.704 of 2007 on the file of the II Additional District and Sessions Judge (Fast Track Court), Sangareddy (for short, the Tribunal), seeking enhancement of compensation.

2. For the sake of convenience, the parties have been referred to as arrayed before the Tribunal.

3. The claimant filed a petition under Section 166 of the Motor Vehicles Act, claiming compensation of Rs.4,00,000/- for the injuries sustained by him in a motor vehicle accident. It is stated that on 01.08.2007, after attending duty, the claimant and one Tirumala Rao were returning on Bajaj Boxer Motor Cycle No.AP 11 H 1418 and when they reached Restile Factory in the limits of Malkapur, one Tanker bearing No.GJ 6 TT 6876 came in opposite direction, driven by its driver in a rash and negligent manner at high speed and dashed the motor cycle of the claimant. As a result of which, the claimant sustained grievous injuries. On a complaint a case in Crime No.76 of 2007 has been registered against the driver of the Tanker. Since the

accident occurred due to the rash and negligent driving of the driver of Tanker, the claimant filed aforesaid O.P. against respondent Nos.1 and 2, who are the owner and insurer of the aforesaid Tanker, respectively.

4. Before the Tribunal, the 1st respondent remained *ex parte*.

5. The 2nd respondent filed counter denying the averments in the petition including the manner in which the accident took place, age, avocation and income of the claimant and also the injuries said to have been sustained by the claimant. It is also contended that the driver of the Tanker was not having valid and effective driving licence as on the date of the accident. It is further contended that the accident occurred only due to the rash and negligent driving of the claimant and that there was no negligence on the part of the driver of the Tanker. It is also contended that the compensation claimed is excessive and exorbitant.

6. Basing on the above pleadings, the following issues are framed before the Tribunal:-

- 1) Whether the accident occurred due to the rash and negligent driving of the driver of Tanker bearing No. GJ 6 TT 6876?

- 2) Whether the petition is bad for non-joinder of necessary parties?
- 3) Whether the petitioner is entitled for compensation, if so, from whom and what just amount?
- 4) To what relief?

7. During trial, on behalf of the claimant, P.Ws.1 and 2 were examined and Exs.A1 to A9 were marked. On behalf of the respondents, no oral evidence was adduced, but Ex.B1-copy of Policy was marked.

8. 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 driver of the Tanker and accordingly, awarded total compensation of Rs.43,000/- with interest @ 7.5% per annum. Being not satisfied with the said amount, the claimant filed the present appeal seeking enhancement of compensation.

9. Heard and perused the record.

10. A perusal of the impugned judgment would show that the Tribunal has framed Issue No.1 as to whether the accident had occurred due to rash and negligent driving of the Tanker by its driver, to which the Tribunal after considering the evidence of P.W.1

coupled with the documentary evidence, has categorically observed that the accident in question was occurred due to rash and negligent driving of the offending vehicle i.e., Tanker by its driver and has answered in favour of the claimant and against the respondents. 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 driver of Tanker.

11. Insofar as the quantum of compensation is concerned, as per Ex.A3, the claimant had sustained one grievous injury and two simple injuries. Since the claimant has sustained one fracture injury, he must have taken treatment for a considerable period and he might have put some pain and suffering, but the Tribunal awarded only Rs.5,000/- towards extra nourishment, care and pain and suffering and also Rs.2,000/- towards transportation charges, which appears to be meager. The contention of the learned Counsel for the claimant is that though the claimant filed medical bills for Rs.1,79,520/-, the Tribunal did not consider the same and awarded only Rs.10,000/- towards medical expenses. In para No.22 the Tribunal has vividly discussed with regard to the medical bills filed by the claimant and has categorically held that the medical bills produced by the claimant pertains to the prescriptions of one Prasanthi Ortho Hospital, for the

subsequent treatment but without the medical reports and evidence of earlier doctors at Gandhi Hospital, the medical bills cannot be relied upon. However, considering the nature of injuries and the treatment rendered by him, the Tribunal has rightly granted Rs.10,000/- towards medical expenses. Therefore, in the facts and circumstances of the case, this Court feels that claimant is entitled to the following amount under various heads.

Sl. No.	Name of Head	Awarded by Tribunal Rs. Ps.	Awarded by this Court Rs. Ps.
1.	One grievous injury	20,000.00	20,000.00
2.	Two simple injuries	6,000.00	6,000.00
3.	Medical expenses	10,000.00	10,000.00
4.	Pain and suffering	--	30,000.00
5.	Extra nourishment	5,000.00	5,000.00
6.	Transportation and attendant charges	2,000.00	17,000.00
	TOTAL	43,000.00	88,000.00

12. Accordingly, the M.A.C.M.A. is partly allowed by enhancing the compensation amount awarded by the Tribunal from Rs.43,000/- to Rs.88,000/-. The enhanced amount shall carry interest @ 7.5% per annum from the date of award i.e., 09.03.2010 till the date of realization. There shall be no order as to costs.

13. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

22.03.2022
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JUSTICE G. SRI DEVI