

THE HON'BLE JUSTICE M.G. PRIYADARSINI

M.A.C.M.A. No.2350 of 2015

JUDGMENT:

This appeal is filed by the claimant, injured, aggrieved by the award and decree, dated 27.12.2014 made in O.P.No.260 of 2012 on the file of the Motor Accident Claims Tribunal-cum-VIII Additional District Judge at Nizamabad (for short, the Tribunal).

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

The claimant filed a petition under Section 166 of the Motor Vehicles Act claiming compensation of Rs.4.00 lakhs towards compensation for the injuries sustained by him in a motor vehicle accident that occurred on 28.08.2011. According to the claimant, on 28.08.2011, while he was proceeding on a motorcycle from Borgaon to Nizamabad, at about 9:00 p.m., when he reached near petrol Pump, Aryanagar, Nizamabad, the offending car bearing No. AP 25TV 1474, owned by respondent No. 1 and insured with respondent No. 2, being driven by its driver in rash and negligent manner, came in opposite direction on wrong side and dashed the motorcycle. As a result, the claimant sustained severe multiple injuries and was admitted at Yeshoda Hospital, Hyderabad where he was treated from 29.08.2011 to 04.09.2011 and underwent

operations. According to the claimant, he had to incur Rs.1.00 lakh for treatment and need future treatment. Therefore, he laid the claim for Rs.4.00 lakhs against the respondents towards compensation.

Before the Tribunal, while the respondent No. 1 remained ex parte, respondent No. 2, insurance company, contested the claim denying the averments of the claim petition and contended that the amount claimed is excessive and prayed for dismissal of the claim petition.

Considering the claim, counter and the evidence, both oral and documentary brought on record, the tribunal has allowed the O.P. in part awarding a sum of Rs. 3,00,230/- towards compensation. Seeking further enhancement of compensation, the claimant approached this Court with the present appeal.

Heard both sides and perused the material available on record.

The finding of the Tribunal with regard to the manner in which the accident took place has become final as the same is not challenged either by the owner or insurer of the vehicle.

The short question that arises for consideration in this appeal is “*whether the compensation awarded by the Tribunal is just and equitable*”?

The only contention advanced by the learned counsel for the appellant-claimant is that although the tribunal has rightly assessed the income of the claimant at Rs.5,000/- per month, granted sufficient amounts under the heads of pain, suffering & trauma; medical expenses; transportation, nourishment & attendant charges; future medical expenses, disability and loss of amenities, did not award any amounts separately for the grievous injuries, which are five in number, and not awarded sufficient amounts under the head of loss of earnings, more particularly when the claimant was on follow up treatment for three and half years. Therefore, the learned counsel seeks enhancement of compensation under these heads.

On the other hand, the learned Standing Counsel for the Insurance Company has contended that although there was no income proof, the tribunal has adequately assessed the monthly income of the claimant at Rs.5,000/- and even in the absence of any disability certificate, has awarded a sum of Rs.40,000/- under

the head of disability and loss of amenities. Therefore, the learned Standing Counsel sought for dismissal of the appeal.

A perusal of the impugned order would reflect that except stating that he is a private employee and earning Rs. 15,000/- per month, the claimant did not adduce any evidence regarding his age, occupation and income. In such circumstances the tribunal has rightly assessed his income at Rs. 5,000/- per month and rightly awarded a sum of Rs. 30,000/- towards loss of earnings. Even the tribunal has adequately granted the amounts under the heads of pain, suffering and trauma; medical expenses; loss of earnings; transportation, extra nourishment and attendant charges; future medical expenses. The tribunal has also awarded a sum of Rs. 40,000/- towards disability and loss of earnings. However, as rightly pointed out by the learned counsel for claimant, the tribunal has not awarded any amounts towards injuries. The medical record i.e., Ex. A3, injury certificate, discloses that the claimant has suffered as many as five grievous injuries i.e., (1) RTA – severe head injury, (2) right temporo parietal with mass effect, left frontal contusion, (3) left frontal small contusion SDH, (4) right TP communicated depressed fracture with small pneumocephalic and (5) multiple abrasions on fore-head.

P.W.2, doctor, has also deposed that the said five injuries are grievous in nature. His further evidence goes to show that the claimant took follow up treatment till 19.02.2014. Considering the evidence of PW2 coupled with Ex. A3, this Court is inclined to award a sum of Rs. 75,000/- for the grievous injuries. Thus, in all the claimant is entitled for the compensation of Rs. 3,75,230/-.

In the result, the MACMA is allowed in part enhancing the compensation from Rs. 3,00,230/- to Rs. 3,75,230/-. The enhanced compensation shall carry interest at 7.5% per annum till the date of realization. Time for depositing the amount is two months from the date of receipt of a copy of this order. On such deposit, the claimant is entitled to withdraw the said amount without furnishing any security. No order as to costs.

Pending Miscellaneous petitions shall stand closed.

JUSTICE M.G. PRIYADARSINI

20.10.2022
TSR/MNV