

THE HONOURABLE SRI JUSTICE A.SANTHOSH REDDY

M.A.C.M.A.No.1328 OF 2016

JUDGMENT:

This appeal is directed against the award dated 05.08.2013 in O.P.No.2223 of 2009, on the file of the Motor Accidents Claims Tribunal-cum-XVIII Additional Chief Judge-cum-IV Additional Metropolitan Sessions Judge, Hyderabad (for short 'the Tribunal), wherein the said claim application filed by the appellant herein seeking compensation was allowed-in-part, awarding Rs.4,20,313/- with interest at 7% per annum from the date of petition.

2. Heard learned counsel for the appellant and learned counsel for the 3rd respondent-insurer. None appeared for the 1st respondent-owner of Eicher vehicle. Perused the record.

3. During the pendency of this appeal, on 17.03.2016, learned counsel for the appellant represented that the 2nd respondent-driver of the Eicher vehicle is not a necessary party and that the appeal against him be dismissed. Considering the above representation, the appeal against the 2nd respondent was dismissed as withdrawn.

4. The appellant herein filed claim application seeking compensation of Rs.10 lakhs on account of the injuries sustained by him in a motor vehicle accident that occurred on 29.07.2009 at about 04:00 a.m. According to the claimant, on that day, he along with his friends was traveling in Maruthi Van from Hyderabad to Tanuku and at about 04:00 a.m., one Eicher vehicle bearing No.AP 37 Y 4949, driven by its driver in a rash and negligent manner at high speed came in the opposite direction and dashed the Maruthi Van, resulting in serious injuries i.e., fracture of ribs, scapula and multiple abrasions on forehead and face of the claimant, besides causing serious injuries to its inmates. Police, Nakrekal registered a case in Cr.No.138 of 2009 against the driver of the Eicher vehicle. The claimant was admitted in Government Hospital, Nakrekal of Nalgonda District and was treated there for five days and thereafter shifted to Yashoda Hospital, Secunderabad. As a result of the accident, the claimant suffered pain and mental agony and also incurred huge expenditure and suffered loss financially.

5. Respondent No.1-owner of the offending vehicle and respondent No.2-driver remained *ex parte* before the Tribunal. Respondent No.3-insurer filed counter opposing the claim and denying its liability to pay the compensation.

6. 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 Eicher vehicle by its driver. The said finding had become final, as no appeal is preferred by the respondents questioning the same. The Tribunal further held that the claimant was entitled for a total compensation of Rs.4,20,313/-. Accordingly, an award was passed for the said amount with interest at 7% per annum. Dissatisfied with the same, the claimant preferred the present appeal.

7. The only question that arises for consideration is – whether the claimant is entitled for enhancement of compensation, and if so to what extent?

8. The point that arises for determination in this appeal is – whether the claimant is entitled for enhancement of compensation and if so, to what extent?

9. The evidence on record would disclose that P.W.1 was admitted in Government Hospital and later in Kamineni and Yashoda Hospitals. P.W.3, Dr.R.T.S.Naik, Neuro Surgeon of Yashoda Hospital, deposed that the claimant was admitted on 29.07.2009 and was discharged on 01.08.2009. He found fracture of left orbit and frontal bone of the skull, fracture of left seventh rib, fracture of left collar bone and wing bone and necessary surgeries were done and plates and screws were fixed.

10. A perusal of the documents Exs.A-9 to A-14 would fortify the contention of the claimant that he suffered the above stated injuries in the accident. Keeping in view the fracture injuries sustained by the claimant, the Tribunal held that it is not a case of partial or permanent disability and had awarded Rs.3,00,313/- towards actual medical expenses, besides Rs.50,000/- towards future medical expenses, Rs.50,000/- towards pain and suffering and loss of amenities, Rs.10,000/- towards extra nourishment and Rs.10,000/- towards transportation charges and damage to clothing etc. It appears that the Tribunal had taken into consideration the evidence of the doctor P.W.2 and the billing manager

P.W.2 and after perusing the medical bills and the entire material on record had awarded a total compensation of Rs.4,20,313/- (Rs.3,00,313/- + Rs.50,000/- + Rs.50,000/- + Rs.10,000/- + Rs.10,000/-). But the Tribunal had failed to award any compensation for the fracture injuries sustained by the claimant in the accident. The claimant suffered fracture of left orbit and frontal bone of the skull, fracture of left seventh rib, fracture of left collar bone and wing bone i.e., five grievous injuries, apart from simple injuries. Accordingly, an amount of Rs.1,50,000/- is awarded for the said five injuries. Since the claimant suffered injuries to his head, ribs and other vital parts, he requires future medical treatment and the Tribunal had awarded only Rs.50,000/-. It would be just and proper if the same is enhanced to Rs.1,00,000/-. The award of Rs.50,000/- towards loss of amenities and pain and suffering, Rs.10,000/- towards extra nourishment and Rs.10,000/- towards transportation charges and damage to clothing are just and reasonable and needs no interference. Thus, in all, the claimant is entitled for a total

compensation of Rs.6,20,313/- (Rs.3,00,313/- + Rs.1,00,000/-+ Rs.1,50,000/- + Rs.50,000/- + Rs.10,000/- + 10,000/-).

11. In the result, the appeal is allowed-in-part. The award of the Tribunal is modified by enhancing the compensation from Rs.4,20,313/- to Rs.6,20,313/-. The enhanced amount shall carry interest at 7.5% p.a. from the date of award passed by the Tribunal i.e., 05.08.2013 till realization, payable by respondents 1 and 3 jointly and severally. There shall be no order as to costs.

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

A.SANTHOSH REDDY, J

27.10.2022

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