

THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**M.A.C.M.A.No. 1656 of 2014****JUDGMENT:**

This Civil Miscellaneous Appeal is filed by the petitioner against the order and decree dated 15.02.2005 passed in M.V.O.P.No.2039 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-IV Additional District Judge(FTC), Nizamabad.

2. The brief facts of the case are as follows:

On 28.09.2006 at about 5.00 P.M., the petitioner along with another was proceeding on a bicycle and when they reached near Government Polytechnic, at the same time one Auto bearing No.AP-25T-8407 came from their behind at high speed in a rash and negligent manner with high speed and dashed against their bicycle. The petitioner sustained several injuries all over the body and a fracture to his right hand. Immediately, he was shifted to Government Headquarters Hospital, Nizamabad, for treatment. A case in Crime No.117 of 2000 under Section 337 IPC was registered by the Police for the said accident. He claimed compensation of Rs.2,00,000/-.

3. Respondent No.1 owner of the crime Auto filed a written statement denying the petition averments and stated that the crime Auto was duly insured with respondent No.2 and the policy was in force as on the date of the accident and if the Tribunal concludes that the petitioner is entitled to compensation, the same may be granted against the respondent No.2 only.

4. Respondent No.2 filed a counter apart from denying the petition allegations, contended that at the time of accident, the driver of the crime Auto was not holding a subsisting driving licence to drive such vehicle and the vehicle was not road worthy with a valid permit and fitness to play.

3. Based on the pleadings, the Tribunal framed the following points:

1. Whether the accident has taken place due to rash and negligent driving of the vehicle Auto bearing No.AP-25T-8407 by its driver?
2. Whether the petitioner is entitled for compensation. If so, to what amount and against which of the respondent?
3. To what relief?

4. On behalf of the petitioner, P.Ws.1 and 2 were examined and Exs.A1 to A.17 and Ex.C.1 were marked. On behalf of respondent No.2, RW.1 was examined and Ex.B1 and B2 were marked.

5. Learned Counsel appearing for the appellant/petitioner mainly urged that the Tribunal awarded Rs.5,000/- as against the claim of Rs.2,00,000/- under all heads which is not sustainable and stressed for enhancement of compensation. On the other hand, the learned counsel appearing for respondent No.2 while supporting the order of the Tribunal below did not dispute the factum of injuries as shown in Ex.A.3 wound certificate.

Now, the point for consideration is, whether the appellant is entitled to enhancement of compensation?

6. The factum of the accident is not disputed. PW.1 besides examining himself, examined PW.2 Dr. T. Narsing Rao deposed that on 27.07.2003 he examined the injured PW.1 and obtained X-Ray and found PW.1 suffering from a mal-united fracture of the radius right and delayed union of the ulna of the right forearm. He assessed permanent partial disability of 50%

before issuing a disability certificate and he issued Ex.A4 disability certificate. The petitioner filed Ex.A3 wound certificate issued by PW.2 wherein the following injuries are mentioned:

1. Abrasion on right forearm 1 x ½ simple injury
2. Abrasion on forehead ½ x ½ simple injury
3. Lacerated wound on right foot 1 x ½ simple injury
4. Abrasion on chest 1" x 1" simple injury
5. Abrasion on nose, simple injury
6. Laceration on parietal region 3"x1"x ½", simple injury
7. Deformity abnormal mobility abdomen.
8. Fracture both bones of forearm right, grievous

7. Whereas the attested copy of the MLC register is marked as Ex.C1 as a Court document, wherein, it is mentioned that the petitioner sustained three simple injuries which are as under:

1. Suspected injury on right forearm
2. Abrasion on right forehead
3. Laceration on right foot 1x1

The Tribunal while passing the order observed that PW.2 issued the wound certificate on his own without following the injuries mentioned in the MLC register and is a stock witness to

the MVOP cases. As per the guidelines of this Court in AAO No.3518 of 2001, there is a direction to the Commissioner, Workmen Compensation, Nizamabad, and the Chairmen, Motor Accident Claims Tribunal, Nizamabad, not to act solely on the evidence of Dr. T. Narsing Rao and Dr. L. Ramulu in awarding compensation in the claim petitions pending consideration before them. Hence, the Tribunal not considered the disability certificate issued by PW.2.

8. The petitioner, being a businessman, was deprived of his regular income due to the grievous injuries sustained by him. In these circumstances, I am of the opinion that Rs.7,500/- (Rs. Seven thousand and five hundred only) each for the three injuries would be just and reasonable, the total of which comes to Rs.22,500/-(Rupees Twenty two thousand and five hundred only). Further, an amount of Rs.15,000/- (Rupees Fifteen thousand only) can be awarded under the head 'pain and suffering' as the Tribunal failed to grant any compensation towards pain and suffering. Further, an amount of Rs.2,500/- (Rupees Two thousand and five hundred only) is awarded towards loss amenities for each injury, the total of which comes

to Rs.7,500/-(Rupees Seven thousand and five hundred only). In total, the appellant/petitioner is awarded compensation of Rs.45,000/- (Rupees Forty five thousand only). Accordingly, the appeal is allowed in part enhancing the compensation from Rs.5,000/- to Rs.45,000/-. The enhanced amount shall carry interest at the rate of 7.5% from the date of petition till realization. There shall be no order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in this writ petition, shall stand closed.

NAMAVARAPU RAJESHWAR RAO, J

7th day of February, 2023.

BDR