

HONOURABLE JUSTICE M. G. PRIYADARSINI

M.A.C.M.A. NO. 3277 OF 2016

JUDGMENT:

Not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal-cum-XVIII Additional Chief Judge (Fast Track Court), City Civil Court, Hyderabad, in M.V.O.P. No. 2504 of 2011, dated 22.09.2016, the present appeal is filed by the claimant seeking enhancement of compensation.

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

3. The facts of the case are as follows:

The claimant has filed the claim petition under Section 166 of the Motor Vehicles Act claiming compensation of Rs.5,00,000/- for the injuries sustained by him in the accident occurred on 22.09.2011. Appellant herein is the petitioner in the main O.P. According to the petitioner, on 22.09.2011 at about 1:30 pm, the petitioner was proceeding on his motor cycle bearing No. AP 28 BD 4106 from Gundlamachnoor village towards Patancheru side and when he reached Indresham village outskirts near bricks bridge, at the same time a lorry bearing No.AP 05 U

604 being driven by its driver with high speed and in rash and negligent manner and while overtaking another vehicle dashed his motorcycle. As a result, the petitioner fell down and sustained grievous injuries to right thigh and other multiple injuries. Immediately, he was shifted to Mythri Hospital and for better treatment he was shifted to Narayana Hrudayala Hospitals, Jeedimetla, Hyderabad. According to the petitioner, he was aged about 19 years and working as a drilling operator at the time of accident and was earning Rs.5,000/- per month. But, due to the injuries sustained in the accident he spent huge amount towards medical expenses. Thus, he has been claiming compensation of Rs.5,00,000/- under various heads against respondent No.1 and 2, who are owner and insurer of the lorry.

4. Respondent no. 1 remained ex parte; Respondent No. 2 filed counter denying the averments of the claim petition and the manner in which the accident occurred, including the age, avocation and income of the injured, medical expenditure incurred and also contended that the claim of compensation is excessive and prayed to dismiss the petition.

5. Based on the above pleadings, the Tribunal framed the following issues:

1. Whether the accident took place due to the rash and negligent driving of the vehicle bearing No. AP 05 U 604 causing injuries to the petitioner?
2. Whether the petitioner is entitled to compensation, if so, from whom and to what extent?
3. To what relief ?

6. In order to prove the issues, PWs. 1 and 2 were examined and Exs.A1 to A12 got marked on behalf of the petitioner. On behalf of the respondents, none were examined and no exhibits were got marked.

7. Considering the oral and documentary evidence available on record, the Tribunal has awarded an amount of Rs.1,37,000/- towards compensation to the appellant-claimant along with proportionate costs and interest @ 9 % per annum from the date of petition till the date of realization against the respondent Nos. 1 & 2 jointly and severally.

8. The learned counsel for the appellant-claimant has submitted that although the claimant, by way of evidence of P.W.2 doctor, coupled with documentary evidence established that he had sustained grievous injuries and filed disability certificate of 40% issued by the orthopedic doctor but the Tribunal without considering the same has awarded very meager amount under various heads.

9. The learned Standing Counsel appearing on behalf of second respondent sought to sustain the impugned award of the Tribunal contending that after considering the manner of accident and the nature of injuries sustained by the petitioner, the learned Tribunal has awarded reasonable compensation and the same needs no interference by this court.

10. Admittedly, there is no dispute with regard to the manner of accident. However, after evaluating the evidence of P.W-1 and P.W-2 coupled with documentary evidence available on record, the Tribunal rightly held that the accident occurred due to the rash and negligent driving of the driver of the offending vehicle.

11. Now, with regard to the quantum of compensation, learned counsel for appellant/claimant submitted that the petitioner is a drilling operator and earning Rs.5,000/- per month. Further, due to the injuries he has incurred loss of earnings and suffered disability. To establish the same, he got examined P.W.2 but the Tribunal has not considered the disability and awarded meager amount. Therefore the learned counsel sought for enhancement of compensation awarded by the Tribunal.

12. This court has perused the evidence of P.W.2 Doctor who has deposed that the claimant came to his hospital for disability certificate, he

verified the previous medical record and based on the injuries 1 to 3, he has issued disability certificate showing that the petitioner got 40% partial and permanent disability. In the cross examination he clearly deposed that he is not the treated doctor but issued disability certificate based on the medical record. The Tribunal did not consider the disability accessed by P.W.2 as he was not the doctor who provided the treatment. As per the medical record, the petitioner sustained Grade II compound fracture type, i.e. fracture inter-condular which is a grievous in nature.

13. It is pertinent to state that even due to the injury, the claimant suffered partial-permanent disability as deposed by P.W.2 was not taken into consideration, as there is no permanent disability. Therefore, the question of loss of future earning capacity does not arise. Furthermore, P.W. 2 is not the person who has provided treatment nor conducted surgery. Therefore, the Tribunal has rightly discarded the evidence of P.W. 2. At this juncture, reliance can be placed upon a judgment of apex court in ***Rajkumar vs Ajaykumar and Another***¹, the apex court observed that:

¹ (2011) 1 SCC 343

“The Tribunal should also act with caution, if it proposed to accept the expert evidence of doctors who did not treat the injured but who give ‘ready to use’ disability certificates, without proper medical assessment. There are several instances of unscrupulous doctors who without treating the injured, readily giving liberal disability certificates to help the claimants. But where the disability certificates are given by duly constituted Medical Boards, they may be accepted subject to evidence regarding the genuineness of such certificates. The Tribunal may invariably make it a point to require the evidence of the Doctor who treated the injured or who assessed the permanent disability. Mere production of a disability certificate or Discharge Certificate will not be proof of the extent of disability stated therein unless the Doctor who treated the claimant or who medically examined and assessed the extent of disability of claimant, is tendered for cross-examination with reference to the certificate.”

In view of the above judgment the petitioner/claimant is not entitled for claiming amount under the head of disability.

14. Now, coming to the injuries sustained by the claimant, as per the record, he has sustained one fracture injury, the Tribunal has awarded Rs.50,000/- for injuries, Rs.17,000/- for medical expenses, Rs.20,000/- for extra nourishment, transportation and attendant charges and the same

need not be disturbed. Apart from the above heads, the Tribunal has awarded an amount of Rs.10,000/- towards pain and sufferings and mental agony appears to be less. Therefore, an amount of Rs.25,000/- is awarded towards pain and sufferings and mental agony. Further, the amount of Rs.40,000/- for loss of earnings is enhanced to Rs.50,000/-. In all, the petitioner is entitled for an amount of Rs.1,62,000/-.

15. In the result, the M.A.C.M.A. is allowed in part by enhancing the compensation amount awarded by the tribunal from Rs.1,37,000/- to Rs.1,62,000/-. The enhanced amount shall carry interest at 6% p.a. from the date of petition till the date of realization, to be payable by the respondent Nos.1 and 2 jointly and severally. The amount shall be deposited within a period of one month from the date of receipt of a copy of this order. On such deposit, the claimant is entitled to withdraw the amount. There shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

M.G.PRIYADARSINI,J

11.01.2023

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