

HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A. No.1352 of 2017

JUDGMENT:

Not being satisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal-cum-XXIV Additional Chief Judge, City Civil Courts, Hyderabad, in O.P. No.2422 of 2010, dated 05.05.2016, the present appeal is filed by the claimant seeking enhancement of compensation.

2. According to the petitioner, on 15.11.2009 at about 10-30 a.m., while the petitioner along with his friend Thirupathaiah was proceeding on a Hero Honda motorcycle bearing No. AP 24 M 4990 from Bandachina Ravirala to Kothagudem and when they crossed Pillaipally village and reached near BS Stone Cutting Mill, the driver of Tipper lorry bearing No. AP 12 V 1950 reversed the vehicle all of a sudden in rash and negligent manner and hit his motorcycle, due to which, both the petitioner and his friend fell down and sustained grievous injuries and the petitioner was shifted to Anurag Orthopecic and Multi Specialty Hospital, Dilsukhnagar, and admitted as inpatient. Due to the said accident, he sustained fracture of left humerus middle 1/3rd and other bleeding injuries, operated on 16.11.2009 and C-arm orif with

DC plating was done BB cuff and collar applied and was discharged on 22.11.2009 with advise to do physiotherapy exercises etc. and he spent more than Rs.30,000/-. According to the petitioner, he was working as Faculty for Java and C++ in Transcript Solutions and was earning Rs.9,500/- per month and due to the injuries, he was bed ridden for three months and lost his earnings. Thus, he is claiming compensation of Rs.1,00,000/- under various heads against the respondent Nos.1 and 2, who are owner and insurer of the offending auto.

3. Respondent No.1 remained ex parte. Respondent No.2 filed counter disputing the manner of accident and nature of injuries sustained by the petitioner and the treatment taken by him. It is further contended that the claim is excessive.

4. Respondent No.2 filed additional counter contending that the driver of the crime vehicle was not having valid driving license at the time of accident and hence, prays to dismiss the petition.

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

1. *Whether the accident took place due to rash and negligent driving of the vehicle bearing No.AP 12 V 1950 causing injuries to the petitioner?*

2. Whether the petitioner is entitled for compensation, if so, to what extent and from whom?

3. To what relief?

6. In order to prove the issues, PWs.1 and 2 were examined and Exs.A1 to A14 got marked on behalf of the petitioner. On behalf of respondent No.2, RWs.1 and 2 were examined and Exs.B1 to B3 were marked.

7. Considering the oral and documentary evidence available on record, the Tribunal has awarded an amount of Rs.1,00,000/- towards compensation to the appellant-claimant along with costs and interest @ 7.5% per annum from the date of petition till the date of deposit against the respondent Nos.1 and 2 jointly and severally. However, the respondent No.2 can recover the compensation from the respondent No.1 in the same proceedings by making necessary application for execution.

8. Heard the learned counsel for the appellant-claimant and the learned Standing Counsel for the second respondent-Insurance Company. Perused the material available on record.

9. The learned counsel for the appellant-claimant has submitted that although the claimant, by way of evidence of P.Ws.1 and 2 coupled with documentary evidence established the fact that the accident occurred due to the rash and negligent driving of the driver of the Tipper lorry, and the petitioner has sustained permanent disability due to the grievous injuries caused in the accident and spent huge amount towards her treatment, the Tribunal awarded very meager amount.

10. The learned Standing Counsel appearing on behalf of second respondent-Insurance Company sought to sustain the impugned award of the Tribunal contending that 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.

11. With regard to the manner of accident, there is no dispute. However, after evaluating the evidence of PW-1 coupled with documentary evidence available on record, the Tribunal rightly held that the accident was occurred due to rash and negligent driving of driver of offending Tipper lorry.

12. Coming to the quantum of compensation, according to the petitioner, he sustained fracture left humerus middle 1/3rd and other bleeding injuries, operated on 16.11.2009 and C-arm orif with DC plating was done BB cuff and collar applied and was discharged on 22.11.2009 with advise to do physiotherapy exercises etc. and he spent more than Rs.30,000/- and that he requires one more surgery for removal of implants for which he estimated expenditure at Rs.20,000/-. The Doctor who treated the petitioner examined as PW-2 and he deposed that the petitioner was admitted in his hospital with history of road traffic accident and he had fracture of humerus M/3rd left and he was operated on 16.11.2009 C-arm ORIF with DC plating was done, BB cuff and collar were applied and he was discharged on 22.11.2009 with an advice to use medicines, active finger movements, physiotherapy exercises, not to use left arm till further advise and the injury is grievous in nature. PW-2 further deposed that PW-1 needs one more surgery for removal of implants and estimated the expenditure would be around Rs.20,000/-. Therefore, considering the evidence of PWs.1 and 2 coupled with documentary evidence on record, the tribunal awarded an amount of **Rs.30,000/-** for the fracture sustained by PW-1, **Rs.27,715/-** towards medical bills, and **Rs.20,000/-**

towards future medical expenses for removal of implants, which are just and reasonable and as such, the same are not disturbed. Further an amount of Rs.10,000/- is awarded towards pain and sufferance, which is very less and hence, the same is enhanced to **Rs.20,000/-**. According to the petitioner, he was working as Faculty for Java and C++ in Transcript Solutions and was earning Rs.9,500/- per month and due to the injuries, he was bed ridden and that as he could not attend his job for six months and lost his earnings, he lost his job. Therefore, considering the age and avocation of the petitioner, the tribunal awarded an amount of Rs.20,000/- towards loss of earnings, which is very less, and as such, the same is enhanced to **Rs.30,000/-**. Further the tribunal also awarded an amount of Rs.5,000/- towards extra nourishment and Rs.5,000/- towards transportation charges, which are very less and as such, the same is enhanced to **Rs.20,000/-** towards extra nourishment, transport and attendant charges. Thus in all the petitioner is entitled for an amount of **Rs.1,47,715/-** under all counts.

13. With regard to the liability, after evaluating the evidence of RWs.1 and 2, the tribunal rightly held that though the driver of the crime vehicle was not having valid driving license at the time of accident, the respondent No.2-Insurance Company is liable to pay

compensation to the petitioner. However, respondent No.2 is entitled to recover the said amount from the respondent No.1/insured. Therefore, there are no grounds to interfere with the findings given by the tribunal on this aspect.

14. In the result, the M.A.C.M.A. is allowed by enhancing the compensation amount awarded by the Tribunal from Rs.1,00,000/- to **Rs.1,47,715/-**. The enhanced amount shall carry interest at 6% p.a. from the date of petition till the date of realization, payable by respondent Nos. 1 and 2 jointly and severally. The respondent No.2 shall deposit the entire compensation amount within a period of one month from the date of receipt of a copy of this order and later they are entitled to recover the same from the respondent No.1. On such deposit of compensation amount by the respondent No.2, the claimant is at liberty to withdraw the same without furnishing any security. No costs.

Miscellaneous petitions, if any pending, shall stand closed.

M.G.PRIYADARSINI,J

25.01.2023
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