

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.527 OF 2004

JUDGMENT:

This appeal is preferred under Section 173 of the Motor Vehicles Act, challenging the judgment and award dated 22.10.2003 passed in O.P. No.276 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, Nellore.

2. For the sake of convenience, the parties to this appeal will be referred to as they are arrayed before the Tribunal.

3 .The facts leading to filing of the present appeal are briefly as follows: On 31.7.1998 the petitioner and others have engaged car bearing No.TN 02/A 1863 to go to Chennai from Nellore. When the car reached near 4/95th KM stone near Venumbaka cross road of D.V.Satram Mandal, the driver of the car had driven the same in a rash and negligent manner at high speed and dashed against the stationed lorry. The accident occurred due to the rash and negligent driving of the driver of the car against whom the Station House Officer, D.V.Satram Police Station registered a case in crime No.36 of 1998 under Sections 337 and 338 IPC. Due to the accident, the petitioner sustained grievous injuries to his liver and sustained fracture on ribs 2, 3, 4 and 5. Immediately after the accident, the petitioner was shifted to Apollo Hospital, Chennai where he underwent treatment as inpatient from 31.7.1998 to 02.9.1998 and also underwent major operation. The petitioner took treatment as out-patient for a period of six months. By the time of the accident, the petitioner was aged about 40 years and used to earn Rs.25,000/- per month as agriculturist and transport operator. Due to the injuries sustained in the accident, the petitioner could not attend his work for a long time and thereby lost his income. The car bearing No.TN 02/A 1863, which belongs to the first respondent, was insured with the second respondent at the relevant point of time. Hence, the petition is filed under Section 166 of M.V. Act claiming a compensation of Rs.5,00,000/- against the respondent Nos.1 and 2 jointly and severally with interest and costs.

4. The first respondent remained *ex parte*. The second respondent filed counter

denying all the averments made in the petition including the manner of the accident and nature of the injuries sustained by the petitioner, *inter alia*, contending that there was no rashness or negligence on the part of the driver of the car. The accident occurred due to the rash and negligent act of the driver of the lorry. The petitioner is not entitled to claim compensation unless the driver of the car was having valid and effective driving licence as on the date of the accident. The amount of compensation claimed by the petitioner, under various heads, is highly excessive and exorbitant. Hence, the petition may be dismissed against this respondent.

5. Basing on the rival contentions, the Tribunal framed three issues. During the course of inquiry, on behalf of the petitioner, P.Ws.1 and 2 were examined and Exs.A1 to A21 were marked. On behalf of the respondent no oral or documentary evidence was let in.

6. Basing on the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of car bearing No.TN 02/A 1863, which resulted in injuries to the petitioner, and allowed the petition in part by awarding a compensation of Rs.3,00,000/- with interest at 9% per annum from the date of the petition till the date of deposit. Being not satisfied with the quantum of compensation awarded by the Tribunal, the petitioner preferred the appeal.

7. The contention of the learned counsel for the petitioner is three fold:

(1) as per the testimony of P.W.2 (Doctor), the petitioner incurred 35% disability and the same was not considered by the Tribunal in right perspective;

(2) the amount of compensation awarded by the Tribunal is not just and reasonable; and

(3) the Tribunal has not awarded any amount under the head loss of future amenities.

Per contra, learned counsel for the second respondent submitted that in the absence of disability certificate issued by the Medical Board, the petitioner is not entitled to claim compensation under the head disability. He further submitted that the quantum of compensation awarded by the Tribunal is just and reasonable; hence, there are no grounds much less valid grounds to interfere with the award passed by the Tribunal.

8. Basing on the rival contentions, the only point that arises for consideration in this appeal is:

Whether the Tribunal has awarded just and reasonable compensation or not?

Point:

9. The oral testimony of P.W.1 coupled with Exs.A1, A2 and A4 clearly reveals that the accident occurred due to the rash and negligent driving of the driver of the car. Basing on the above evidence, the Tribunal rightly arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of car, which resulted in injuries to the petitioner. The finding of the Tribunal became final in view of non-filing of appeal or cross-objections by the respondents.

10. As per the oral testimony of P.W.1, he sustained grievous injuries to the liver and fractures to ribs 2, 3, 4 and 5. His testimony further reveals that he took treatment as inpatient in Apollo Hospital, Chennai from 31.7.1998 to 02.9.1998 i.e., for a period of 34 days. As per the oral testimony of P.W.2 (Doctor), the petitioner was admitted in Apollo Hospital, Chennai on 31.7.1998 and discharged on 02.9.1998. His testimony further reveals that the petitioner sustained fracture to ribs 2, 3, 4 and 5 and underwent operation on 31.7.1998.

11. A perusal of Exs.A7 to A15 clearly reveals that the petitioner took treatment as inpatient in Apollo Hospital, Chennai for a period of 34 days. Due to the damage to the liver and fracture to ribs 2, 3, 4 and 5, the petitioner might have suffered a lot. Taking into consideration the nature of injuries sustained by the petitioner, I am inclined to award Rs.75,000/- towards pain and suffering instead of Rs.40,000/- as awarded by the Tribunal. The petitioner produced medical bills to the tune of Rs.1,92,027/-. P.W.2 categorically admitted that the bills produced by the petitioner were issued by Apollo Hospital, Chennai. Taking these bills into consideration, the Tribunal rightly awarded Rs.2,20,000/- towards treatment and transportation charges. For one reason or the other, the tribunal has not awarded any amount towards extra nourishment. It is a known fact that the Doctors may advise the patients to take special diet for uniting of fractures and also for speedy recovery. Taking into consideration the nature of fractures sustained by the petitioner, I am inclined to award Rs.10,000/- towards extra nourishment.

12. Admittedly the petitioner has taken treatment as inpatient in Apollo Hospital, Chennai for a period of 34 days. The petitioner might not have attended to his work at least for a period of three months. Hence, I am inclined to award an amount of

Rs.20,000/- towards loss of earnings during the period of treatment. As seen from the testimony of P.W.2, due to damage of muscles on the abdominal walls, the petitioner has been suffering with hernia. His testimony further reveals that there is a scar on (disfigurement of) the abdomen of the petitioner. His testimony further reveals that the petitioner incurred 25% disability due to hernia and 15% disability due to the disfigurement of abdomen. A perusal of medical record clearly reveals that the petitioner has been suffering with hernia due to previous history of injury. The fact remains that the petitioner has not approached the Medical Board to obtain disability certificate. Due to the scar on the abdomen, the petitioner may feel some difficulty. Taking these circumstances into consideration, I am inclined to award an amount of Rs.50,000/- towards loss of future amenities. The petitioner is entitled to the compensation under the following heads:

Sl. No.	Head	Compensation
1.	Pain and suffering	75,000
2.	Treatment and transportation charges	2,20,000
3.	Extra nourishment	10,000
4.	Loss of earnings during the period of treatment	20,000
5.	Loss of future amenities	50,000
	Total	3,75,000

The compensation awarded to the petitioner is just and reasonable to meet the ends of justice. The respondent Nos.1 and 2 are jointly and severally liable to pay compensation with interest at 7.5% per annum from the date of petition till the date of realisation. Accordingly, the point is answered.

13. In the result, the appeal is allowed in part, enhancing the quantum of compensation from Rs.3,00,000/- to Rs.3,75,000/-. The petitioner is entitled to interest at 7.5% per annum on the enhanced compensation amount of Rs.75,000/- from the date of petition till the date of deposit. The respondent Nos.1 and 2 are jointly and severally liable to pay the same. There shall be no order as to costs in this appeal. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 06.10.2015.

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