

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY
M.A.C.M.A. No.751 OF 2009

JUDGMENT:

1 _____ challenging the judgment and award dated 29.08.2006 passed in M.V.O.P.No.1838 of 2005 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-IV Additional District Court, Warangal, the claimant filed the present appeal seeking higher compensation.

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

3 _____ The facts leading to filing of the present appeal, briefly, are as follows:

4 _____ The petitioner / claimant filed MVOP No.1838 of 2005 claiming compensation of Rs.1.00 lakh/- for the injuries sustained by him in an accident that occurred on 27.01.2005. As per the case of the petitioner, on the date of accident, the petitioner, along with one Ravi Kumar, was proceeding to Hanamkonda from Ursu on a cycle. When they reached near Sri Krishna temple, Warangal, the rider of Hero Honda Motorcycle bearing registration No.36 L 4816 (hereinafter referred to as 'the crime vehicle') had driven it in a rash and negligent manner and hit the cycle of the petitioner from behind due to which the petitioner fell down and sustained multiple injuries. In connection with the said accident, a case in Cr.No.22/T-44 of 2005 for the offences punishable under sections 337 and 338 of IPC was registered against the rider of the Hero Honda motorcycle. The petitioner took treatment as inpatient in Balaji Hospital, Warangal from 27.01.2005 to 07.02.2005. The petitioner spent an amount of Rs.25,000/- towards medicines and extra nourishment. By the time of accident, the petitioner was aged 28 years and used to earn Rs.4,500/- p.m. as mason. Due to the injuries, the petitioner could not attend his work for long time and thereby lost his income. As on the date of accident, the crime vehicle was insured with the second respondent. Hence the

respondents 1 and 2 are jointly and severally liable to pay compensation to the petitioner.

5 First respondent (owner of the crime vehicle) remained ex parte. Second respondent-insurance company filed counter denying the material averments made in the claim petition inter alia contending that there was no negligence on the part of the rider of the crime vehicle. It is further contended that the amount of compensation claimed by the petitioner under various heads is excessive and exorbitant. Hence the petition may be dismissed.

6 Basing on the above pleadings, the Tribunal framed the following issues for trial:

- i. Whether the accident occurred on 27.01.2005 was due to rash and negligent driving of vehicle bearing No. AP 36L 4816 (Hero Honda) by its driver as per S.166 of M.V. Act?
- ii. Whether the petitioner is entitled for compensation? If so, what amount and from whom?
- iii. To what relief?

7 During the course of trial, on behalf of the petitioner, P.Ws.1 and 2 were examined and Exs.A.1 to A.6 and Ex.X.1 were marked. On behalf of the respondents no oral or documentary evidence was adduced.

8 Having appreciated 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 rider of the crime vehicle and there was no negligence on the part of the petitioner and awarded compensation of Rs.37,000/- to the petitioner. Not being satisfied with the compensation awarded, the petitioner filed the present appeal seeking higher compensation.

9 Now the point for consideration in this appeal is whether the Tribunal has awarded just and reasonable compensation to the petitioner?

10 Sri Alladi Ravinder, the learned counsel for the petitioner submitted that the Tribunal awarded an amount of Rs.15,000/- towards medicines even though the petitioner filed bills to the tune of Rs.22,000/-. He further submitted that the amount of compensation awarded under various heads is too meagre.

11 Per contra, Sri Kota Subbarao, the learned standing counsel for the insurance company submitted that the compensation awarded under various heads is just and reasonable. He further submitted that the petitioner did not produce any document to prove his income.

12 As per the findings of the Tribunal, the accident occurred due to the rash and negligent driving of the rider of the crime vehicle. The second respondent did not file appeal challenging the finding of the Tribunal on issue No.1. The oral testimony of P.W.1 that the accident occurred due to the rash and negligent driving of the rider of the crime vehicle is fully supported by the recitals of Ex.A.1 FIR and Ex.A.3 charge sheet. The Tribunal has assigned cogent and valid reasons to its finding on issue No.1. Having regard to the facts and circumstances of the case, I am of the considered view that the accident occurred due to the rash and negligent driving of the crime vehicle by its rider.

13 The predominant contention of the learned counsel for the petitioner is that the Tribunal, by invoking Section 163-A of the M.V. Act, restricted the medical claim to Rs.15,000/-. If the petition is filed under Section 163-A of the Act, the Tribunal is justified in restricting the medical claim to the tune of Rs.15,000/-. It is not in dispute that the claim petition is filed under Section 166 of the M.V. Act. The oral testimony of P.W.1 coupled with Ex.A.6 reveals that the petitioner spent an amount of Rs.22,721/- towards medicines. The Tribunal believed the medical bills. Therefore, I am inclined to award an amount of Rs.22,721/- towards medical bills.

14 The oral testimony of P.Ws.1 and 2 coupled with Exs.A.2, A.4 and A.5 reveals that the petitioner sustained one fracture. The Tribunal awarded an amount of Rs.8,000/- towards pain and suffering. A perusal of the record reveals that the petitioner took treatment as inpatient from 27.01.2005 to 07.02.2005 i.e. for 12 days due to fracture to his left leg. Because of the fracture, the petitioner might have suffered a lot. Hence I am inclined to award an amount of Rs.15,000/- towards pain and suffering. The Tribunal awarded an amount of Rs.4,000/- towards extra nourishment, which, in my considered view, is just and reasonable.

15 As per the finding of the Tribunal, the petitioner used to earn Rs.3,000/- p.m. Even as per the finding recorded by the Tribunal, the petitioner did not attend the work for a period of four months. The petitioner claimed an amount of Rs.9,000/- towards loss of earnings. Therefore, the Tribunal granted an amount of Rs.9,000/- only towards loss of earnings. However, there is no bar to grant more amount than the amount claimed by the petitioner under specific head basing on the facts and circumstances of the case. Hence I am inclined to award an amount of Rs.12,000/- towards loss of earnings. The Tribunal awarded an amount of Rs.1,000/- towards transportation charges, which is just and reasonable.

16 Absolutely there is no material on record to establish that the petitioner sustained permanent disability. Therefore, the petitioner is not entitled to any amount under the head loss of future earnings.

17 Thus, in all, the amount of compensation to which the petitioner is entitled, under various heads, is as follows:

<u>Medical charges:</u>	<u>Rs.22,721/-</u>
<u>Pain and suffering:</u>	<u>Rs.15,000/-</u>
<u>Extra nourishment:</u>	<u>Rs.4,000/-</u>
<u>Loss of earnings:</u>	<u>Rs.12,000/-</u>
<u>Transportation charges:</u>	<u>Rs.1,000/-</u>
	<u>=====</u>
<u>TOTAL</u>	<u>Rs.54,721/-</u>

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18 The first respondent being the rider of the crime vehicle is liable to pay the above compensation to the petitioner. It is not in dispute that as on the date of accident, the crime vehicle was insured with the second respondent. Therefore, the second respondent has to indemnify the liability of the first respondent. Hence the respondent Nos.1 and 2 are jointly and severally liable to pay the compensation to the petitioner.

19 In the result, the appeal is allowed in part, enhancing the compensation from Rs.37,000/- as awarded by the Tribunal to Rs.54,721/- with interest at 7.5% p.a. throughout. The respondents are hereby directed to deposit the amount within two months from the date of receipt of a copy of this judgment. On such deposit, the petitioner is entitled to withdraw the entire amount. No order as to costs.

T.SUNIL CHOWDARY, J.

January 28, 2014.

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