

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A.No.1 OF 2013

JUDGMENT:

This appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, challenging the judgment and award dated 29.9.2012 passed in M.V.O.P.No.637 of 2010 on the file of the Chairman, Motor Vehicle Accident Claims Tribunal-cum-I Additional District Judge, Vizianagaram, wherein and whereby a compensation amount of Rs.2,44,800/- was awarded as against the claim of Rs.5,00,000/-.

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

3. The facts leading to filing of the appeal are briefly as follows: On 13.1.2010, at about 7.30 p.m., the petitioner was proceeding to Cheepurupalli on his motor cycle. When he reached near Peda Khana, Gurla village, the driver of Auto bearing No.AP 35U 8748 had driven the same in a rash and negligent manner and dashed the motor cycle of the petitioner from its opposite direction. The accident occurred due to the rash and negligent driving of the driver of the Auto against whom the Station House Officer, Gurla Police Station registered a case in Crime No.4 of 2010 under Sections 337 and 338 IPC. In the said accident, the petitioner sustained injuries on various parts of the body and fractures on right leg and right hand. Immediately after the accident, he was shifted to Sri Sai Super Specialty Hospital, Vizianagaram and thereafter he took treatment in Seven Hills Hospital, Visakhapatnam for a long time. By the time of the accident, the petitioner was aged about 29 years and used to earn Rs.3,000/- per month by working as Agri gold agent. Due to the fractures sustained in the accident, the petitioner could not attend the work and thereby lost his income. The petitioner suffered a lot physically and mentally. The first respondent is the driver and second respondent is the owner of Auto bearing No.AP 35U 8748, which was

validly insured with the third respondent, as on the date of the accident. Hence, the petition claiming a compensation of Rs.5,00,000/- from the respondent Nos.1 to 3 jointly and severally with interest and costs.

4. The respondent Nos.1 and 2 remained *ex parte*. The third respondent filed written statement denying all the averments made in the petition including the manner of the accident and the injuries sustained by the petitioner. The accident occurred due to the rash and negligent driving of the motor cycle by the petitioner and there was no negligence on the part of the driver of the Auto. The petitioner is not entitled to claim compensation from the third respondent unless he proves that the driver of the Auto 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 above pleadings, the Tribunal framed the following issues:

1. Whether the accident occurred due to the rash and negligent driving of the vehicle (auto) bearing No.AP 35U 8748 by its driver?
2. Whether the petitioner is entitled to any compensation and, if so at what quantum and from which of the respondents?
3. To what relief?

6. During the course of trial, on behalf of the petitioner, P.Ws.1 and 2 were examined and Exs.A1 to A6 and X1 were marked. On behalf of the respondents, no oral evidence was adduced but Ex.B1 was marked on behalf of the third respondent.

7. On appraising the oral, documentary evidence and other material available on record, the Tribunal arrived at the conclusion that the accident occurred due to the rash and negligent driving of the driver of

the Auto, which resulted in injuries to the petitioner, and allowed the petition in part by awarding compensation of Rs.2,44,800/-. Being not satisfied with the quantum of compensation awarded by the Tribunal, the petitioner preferred the present appeal.

8. The respondent Nos.1 to 3, having received notice in this appeal, did not choose to appear and contest the matter. Hence, I am inclined to dispose of the appeal on merits in the absence of the respondents.

9. The learned counsel for the petitioner submitted that the Tribunal has not awarded any amount under the heads: medicines, treatment, extra nourishment and loss of earnings. He further submitted that the Tribunal ought to have awarded compensation under those heads. He also submitted that the quantum of compensation awarded by the Tribunal is too meagre.

10. Now, the point that arises for consideration in this appeal is:
Whether the Tribunal has awarded just and reasonable compensation?

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Point:

11. The finding of the Tribunal is that the accident occurred due to rash and negligent driving of the driver of the Auto, which resulted in injuries to the petitioner. The said finding became final in view of non-filing of appeal or cross-objections by the respondents. Hence, I am of the considered view that the accident occurred due to the rash and negligent driving of the driver of the Auto, which resulted in injuries to the petitioner.

12. As per the testimony of P.W.1, he sustained fractures on right leg and right hand. As per the recitals of Ex.X1 (case sheet), the petitioner sustained fracture of right tibia and fibula (both bones of right leg). Admittedly, the petitioner had taken treatment in Seven Hills Hospital, Visakhapatnam from 14.1.2010 to 27.1.2010. As per the testimony of

P.W.2 (Doctor), the petitioner sustained 40% partial permanent disability. Basing on the material available on record, the Tribunal determined the loss of future earning capacity of the petitioner as 40%. The Tribunal, by taking the salary of the petitioner as Rs.3,000/- per month, and adopting appropriate multiplier '17', assessed loss of future earnings of the petitioner at (Rs.36,000 X 17 X 40/100=) Rs.2,44,800/-.

13. For one reason or the other, the petitioner did not choose to file bills or receipts towards purchase of medicines and treatment. In the absence of any document, it may not be possible for the Tribunal to award specific amounts under certain heads. In view of the injuries and fractures sustained by the petitioner, he might have incurred some amount towards purchase of medicines, treatment and transportation. It is common knowledge that Doctors may advise patients to take special diet for uniting of fractures. Taking these aspects into consideration, I am inclined to award Rs.5,000/- towards medicines and treatment; and Rs.5,000/- towards extra nourishment and transportation charges. Due to the fractures, the petitioner might not have attended his work for at least three months including the period of rest. On this count, I am inclined to award Rs.9,000/- (Rs.3,000 X 3 months) towards loss of earnings during the period of treatment and rest. Admittedly, both bones of petitioner's right leg were fractured for which he might have suffered a lot for a considerable period of time. Taking this into consideration, I am inclined to award Rs.30,000/- towards pain and suffering. The petitioner is entitled to the compensation under the following heads:

Sl. No.	Nature of relief	Amount of compensation (Rs.)
1.	Loss of future earnings	2,44,800
2.	Medicines and treatment	5,000
3.	Extra nourishment and transportation charges	5,000
4.	Loss of earnings during the period of treatment and rest	9,000
5.	Pain and suffering	30,000
	TOTAL	2,93,800

The total compensation awarded to the petitioner, as above, is just and

reasonable. The respondent Nos.1 to 3 are jointly and severally liable to pay the compensation to the petitioner. The petitioner is also entitled for interest at the rate of 7.5% per annum from the date of petition till the date of realization on the enhanced compensation amount. Accordingly, the point is answered holding that the Tribunal committed error by not awarding compensation under the other heads.

14. In the result, the appeal is partly allowed, enhancing the quantum of compensation from Rs.2,44,800/- to Rs.2,93,800/- (Rupees two lakhs ninety three thousand eight hundred only). The respondent Nos.1 to 3 are liable to pay the compensation. The petitioner is entitled to the interest at 7.5% per annum on the enhanced compensation of Rs.49,000/- (Rupees forty nine thousand only) from the date of petition till the date of realization. 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: 02.09.2015.

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