

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A.No.127 OF 2013

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988, challenging the judgment and award dated 24.9.2012 passed in M.V.O.P.No.553 of 2011 on the file of the Chairman, Motor Vehicle Accidents Claims Tribunal-cum-XII Additional District Judge, Guntur, wherein and whereby an amount of Rs.1,75,000/- was awarded to the claimant as against the claim of Rs.6,00,000/-.

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 present appeal are briefly as follows: On 03.9.2010 at about 9.30 A.M., the petitioner along with his friend was proceeding on motor cycle bearing No.AP 29 BH 2944 from Dilsukhnagar to H.I.T.S. College. When they reached in front of Bhupathi Public School at Annojiguda village, the driver of lorry bearing No.AP 05 TT 5832 (crime vehicle) had driven the same in a rash and negligent manner and dashed the petitioner's motor cycle from its behind. The Station House Officer, Ghatkesar Police Station registered a case in Crime No.223 of 2010 under Section 337 IPC against the driver of the lorry. Due to the accident, the petitioner sustained crush injury on right ankle and his left hip joint was dislocated. Immediately after the accident, the petitioner was shifted to Kamineni Hospital and after getting first aid, he was taken to Nizam's Institute of Medical Sciences, Hyderabad, where he was treated as inpatient for a long time. The parents of the petitioner spent huge amounts towards medicines and treatment. The lorry bearing No.AP 05 TT 5832 belongs to the first respondent was insured with the second respondent—Insurance Company with effect from 07.2.2010 to 06.2.2011, vide policy No.1505063109P000178972. Therefore, the

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

4. The first respondent filed written statement denying the averments made in the petition including the manner of the accident and nature of the injuries sustained by the petitioner. It is contended that the accident occurred due to the rash and negligent riding of the motor cycle by the petitioner and there was no negligence on the part of the driver of the crime vehicle. The amount of compensation claimed by the petitioner, under various heads, is highly excessive and exorbitant. Hence, the petition may be dismissed.

5. The second respondent filed written statement denying all the averments made in the petition, *inter alia*, contending that there was no negligence on the part of the driver of the crime vehicle; therefore the petition is not maintainable under law. The first respondent had violated the terms and conditions of the policy; therefore, the first respondent alone is liable to pay compensation, if any, to the petitioner. The amount of compensation claimed by the petitioner is on higher side. Hence the petition is liable to be dismissed so far as this respondent is concerned.

6. 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 driver of lorry bearing No.AP 05 TT 5832?
2. Whether the petitioner is entitled to the compensation, if so, from whom?
3. To what relief?

7. During the course of trial, on behalf of the petitioner, P.Ws.1 and 2 were examined and Exs.A1 to A13 and Ex.X1 were marked. On behalf of the respondents, no oral or documentary evidence was let in.

8. On appraising 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 the lorry, which resulted in injuries to the petitioner, and allowed the petition in part by awarding compensation of Rs.1,75,000/-. Being not satisfied with the quantum of compensation awarded by the Tribunal, the petitioner-claimant preferred the present appeal.

9. The learned counsel for the petitioner–claimant submitted that the Tribunal committed error while not granting compensation towards loss of future earnings. He further submitted that the Tribunal awarded meager amounts under different heads. ***Per contra***, learned counsel for the second respondent submitted that the Tribunal has considered various aspects and awarded just and reasonable compensation. He further submitted that there are no grounds to interfere with the judgment and award of the Tribunal.

10. In view of the rival contentions, the points that arise for consideration in this appeal are:

1. Whether the accident occurred due to the rash and negligent driving of the driver of lorry bearing No.AP 05 TT 5832?
2. Whether the Tribunal has awarded just and reasonable compensation or not?

Point No.1:

11. As per the finding of the Tribunal, on issue No.1, the accident occurred due to the rash and negligent driving of the driver of the crime vehicle, which resulted in injuries to the petitioner. The finding recorded by the Tribunal became final in view of non-filing of appeal or cross-objections by any of the respondents, challenging the said finding. The Tribunal rightly considered the oral testimony of P.W.1 and Exs.A1 and A2 (F.I.R., and charge sheet) and arrived at a conclusion that the accident occurred due to the rash and negligent driving of the crime vehicle, which resulted in injuries to the petitioner.

I am fully agreeing with the finding recorded by the Tribunal on issue No.1. Having regard to the fact and circumstances of the case, I am of the considered view that the accident occurred due to the rash and negligent driving of the driver of the crime vehicle. Accordingly, point No.1 is answered in favour of the petitioner and against the respondents.

Point No.2:

12. The oral testimony of P.Ws.1 and 2 coupled with Exs.A2, A3, A8 and A9 (charge sheet, wound certificate, three O.P. chits and 19 X-ray films) clearly reveals that the petitioner took treatment in NIMS for the fracture of right ankle and for dislocation of left hip joint. Due to the fractures, the petitioner might have suffered a lot. Taking into consideration the age of the petitioner and the nature of the fractures sustained by him, the Tribunal rightly awarded an amount of Rs.50,000/- towards pain and suffering.

13. As per the testimony of P.W.2 (Doctor), the petitioner sustained functional disability of 35 – 40%. There is no whisper in the testimony of P.W.2 that the functional disability incurred by the petitioner may affect his earning capacity. By the time of the accident, the petitioner was studying III-year B.E., course. There is every possibility for the petitioner getting a decent job after completion of B.E. The Tribunal has considered all these aspects and rightly restrained from awarding any amount under the head loss of future earnings.

14. In paragraph–9 of the judgment, the Tribunal made an observation that the petitioner may not enjoy his life like other persons due to stiffness in left hip. Taking into consideration the age of the petitioner and the nature of fractures, the Tribunal rightly awarded an amount of Rs.35,000/- towards loss of future amenities. Except the self-serving testimony of P.W.1, there is no other convincing evidence to prove that the parents of the petitioner spent an amount of

Rs.2,80,000/- towards medicines and treatment. Basing on the medical bills produce by the petitioner to the tune of Rs.76,759/-, the Tribunal rightly awarded an amount of Rs.75,000/- towards medical expenses. The Tribunal also awarded an amount of Rs.15,000/- towards transportation and attendant charges.

14. It is a known fact that the Doctors may advise the patients to take special diet for uniting of fractures and for speedy recovery. Admittedly, the petitioner took treatment in NIMS as inpatient for more than one month. Taking the nature of the fractures sustained by the petitioner, I am inclined to award an amount of Rs.15,000/- towards extra nourishment. The total compensation for which the petitioner is entitled to is as follows:

1.	Pain and suffering	:	Rs.50,000
2.	Loss of amenities	:	Rs.35,000
3.	Medical expenses	:	Rs.75,000
4.	Transport & attendant charges:		Rs.15,000
5.	Extra nourishment	:	Rs.15,000
Total			Rs.1,90,000

The compensation awarded under the above heads is just and reasonable. The respondent Nos.1 and 2 are jointly and severally liable to pay the compensation to the petitioner. Accordingly, point No.2 is answered.

15. In the result, the appeal is allowed in part, enhancing the compensation amount from Rs.1,75,000/- to Rs.1,90,000/-. 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 the petition till realisation. 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: 13th August, 2015.

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