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THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY
M.A.C.M.A. No.76 OF 2013

JUDGMENT:

1. This appeal is filed under Section 173 of M.V. Act, assailing the judgment and award dated 14.11.2012 passed in M.V.O.P.No.60 of 2007 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District Court, Adilabad.

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. On 25.012003 the petitioner along with his family members boarded auto bearing No.APT 6813 at Pulimadugu village to go to Uttoor. When the auto reached the outskirts of Pulimadugu, the driver of the auto drove the same in a rash and negligent manner due to which the auto turned turtle. In connection with the said accident, the Station House Officer, Uttoor police station registered a case in Cr.No.3 of 2003 under sections 337 and 338 IPC. Due to the accident, the petitioner sustained injuries on various parts of his body and took treatment as inpatient in Government Hospital, Uttoor and Adilabad. By the date of accident, the petitioner was aged about 22 years and used to earn Rs.2,000/- p.m. Due to the injuries, the petitioner could not attend to his work for long time and thereby lost his income. The auto bearing No.APT 6813, which belongs to the first respondent, was insured with the second respondent as on the date of accident. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.1.00 lakh to the petitioner.

5. First respondent filed counter denying the averments made in the petition including the manner of accident and nature of injuries sustained by the petitioner. The auto bearing No.APT 6813 was insured with the second respondent with effect from 29.07.2002 to 28.07.2003 and hence the second respondent alone has to pay compensation, if any, to the petitioner. Second respondent filed counter denying the material averments made in the petition including the manner of accident. The driver of the auto was not having valid driving licence to drive the auto as on the date of accident and hence this respondent is not liable to pay compensation to the petitioners. The amount of compensation claimed by the petitioner under various heads is highly excessive and exorbitant. There is no obligation on the part of this respondent to indemnify the liability of the first respondent unless the petitioner establishes that the driver of the Jeep bearing No.AP – 04 – U – 4688 was having valid and effective driving licence as on the date of accident. Hence the petition may be dismissed against this respondent.

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

- i. Whether the accident dated 25.01.2003 was due to the rash and negligent driving of motor vehicle bearing No.AP T 6813 belonging to the first respondent?
- ii. Whether the petitioner is entitled to any compensation, if so, to what extent and against which of the respondents?
- 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.12 were marked. On behalf of the respondents, no oral or documentary evidence was let in.

8. Having appreciated the material available on record, the Tribunal arrived at a conclusion that the accident occurred due to

rash and negligent driving of the driver of the auto bearing No.APT 6813, which resulted injuries to the petitioner and allowed the petition in part by awarding compensation of Rs.29,500/-, directing the respondent Nos.1 and 2 to pay the same jointly and severally with interest at 7.5% p.a. from the date of filing of the petition till the date of deposit. Being dissatisfied with the said amount of compensation, the claimant filed the present appeal.

9. In spite of service of notice, the respondent Nos.1 and 2 did not choose to appear and contest the matter. Hence this court is inclined to decide the matter in the absence of the respondents.

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

i. The Tribunal has not considered the injuries sustained by the petitioner in right perspective.

ii. The Tribunal has not awarded future earnings of the petitioner.

iii. The Tribunal has not awarded just and reasonable compensation.

11. Now the points that fall for consideration in this appeal are:

1 . Whether the compensation awarded by the Tribunal is just and reasonable or not?

2. Whether the Tribunal committed error in not awarding any amount under the head 'loss of future earnings?'

POINT Nos.1 & 2 :

12. Both the points are intertwined with each other and hence I am inclined to address both the points simultaneously in order to avoid recapitulation of facts.

13. The finding of the Tribunal that the accident occurred due to the rash and negligent driving by the driver of the auto bearing No.APT 6813 has become final in view of non-filing of the appeal or cross-

objections by the respondent Nos.1 and 2. I am fully agreeing with the finding recorded by the Tribunal 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 driver of the auto bearing No.APT 6813, which resulted injuries to the petitioner.

14. As per the testimony of P.W.1, he sustained fracture to 8th rib and other injuries. As per the recitals of Ex.A.2, Ex.A7 and Ex.A8, the petitioner sustained fracture to rib and two simple injuries.

15. The tribunal awarded an amount of Rs.20,000/- towards pain and suffering. Taking into consideration the nature of the injuries as well as the duration of the treatment taken by the petitioner, I am inclined to award an amount of Rs.25,000/- towards pain and suffering. Except the self served testimony of PW.1, there is no other convincing evidence to establish that the petitioner spent an amount of Rs.8,000/- towards medicines and treatment. Admittedly, the petitioner took the treatment as inpatient in Government Hospital , Uttoor and Adilabad. The tribunal rightly awarded an amount of Rs.2,000/- towards medical expenses, Rs.2,000/- towards extra nourishment and Rs.500/- towards travelling expenses. Due to fracture to 8th rib, the petitioner might not have attended his regular work for a period of two months including treatment period. Hence, I am inclined to award an amount of Rs.6,000/- towards loss of earnings during the treatment period.

16. Learned counsel for the petitioner submitted that the tribunal committed error while not granting compensation under the head loss of future earnings. There is no doubt the tribunal can grant compensation towards loss of future earnings provided the claimant sustains permanent and partial disability which eventually effects his earning capacity. Except self-served testimony of PW.1, there is no

convincing evidence to establish that the petitioner sustained permanent disability due to fracture to 8th rib. If really, the petitioner sustains permanent disability what prevented him to approach the medical board to obtain disability certificate. The petitioner did not choose to even to examine the Doctor to substantiate the stand taken by him. In the absence of the documentary evidence, it may not be possible for the Tribunal to arrive at a conclusion that the petitioner incurred permanent disability. The tribunal rightly considered all these aspects and not awarded any amount under the head loss of future earnings. The compensation awarded under various heads is as follows:

<u>Pain and suffering</u>	<u>:</u>	<u>Rs.25,000-00</u>
<u>Medical expenses</u>	<u>:</u>	<u>Rs. 2,000-00</u>
<u>Loss of earnings</u>	<u>:</u>	<u>Rs. 6,000-00</u>
<u>Extra-nourishment</u>	<u>:</u>	<u>Rs. 2,000-00</u>
<u>Transportation charges</u>	<u>:</u>	<u>Rs. 500-00</u>
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<u>Total</u>	<u>:</u>	<u>Rs.35,500-00</u>
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Thus, the petitioner is entitled for total compensation of Rs.35,500/- which is just and reasonable. Accordingly, the point Nos.1 & 2 are answered.

17. In the result, M.A.C.M.A. is allowed in part. The compensation is enhanced from Rs.29,500/- to Rs.35,500/-. The enhanced amount of Rs.6,000/- shall carry 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

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Date:12-08-2015

Kvsn/gvl

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