

HON'BLE SMT JUSTICE ANIS
CIVIL MISCELLANEOUS APPEAL No.3779 of 2004

J U D G M E N T:

This appeal is filed by the appellant/petitioner under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the order and decree dated 10.03.2004, passed by the Chairman, Motor Accident Claims Tribunal-cum-Additional District Judge, Nizamabad, in O.P.No.624 of 1999, awarding compensation of Rs.65,000/-.

2. The appellant/petitioner filed the above Original Petition under Section 166 of the Act claiming compensation of Rs.2,50,000/- on account of the injuries sustained by him in a motor vehicle accident that occurred on 12.08.1998.

3. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the Original Petition.

4. The brief averments made in the petition are that on 12.08.1998 while the petitioner was going towards D.E.O's office from N.D.C.C. Bank side at about 10:00 am, on seeing his friend he tried to stop the motorcycle, meanwhile first respondent drove the Bajaj Chetak Scooter bearing No.AP.25/E.2981 in a rash and negligent manner and hit the motorcycle of the petitioner from back side, due to which the petitioner has fallen down and motorcycle also fallen on him causing grievous injuries. Immediately, he was admitted in Orthopaedic hospital and thereafter, he was admitted in Mythri hospital, where Dr.C.Hari Prasad conducted operation on 24.08.1998. The petitioner was in the hospital for about 26 days and spent Rs.50,000/- towards medical charges. Due to the accident, the petitioner was unable to walk and bones were not united properly and he is getting pain while walking and he suffered permanent disability. Petitioner is a businessman and also agriculturist earning Rs.10,000/- p.m. Due to the accident, he was unable to do any business. Due to rash and negligent driving of the rider of the scooter,

the accident occurred, therefore both the respondents are liable to pay compensation of Rs.2,50,000/- to the petitioner.

5. The brief averments made in the counter filed by the first respondent are as follows:

The first respondent put the petitioner to prove the manner of accident, his age and income and specifically denied that the petitioner sustained grievous injuries. According to the respondent, the scooter was insured with the second respondent and it is valid from 28.04.1998 to 28.04.1999 and the Insurance Policy was in force at the time of accident. If this Court comes to the conclusion that the petitioner is entitled to recover compensation from the second respondent, the second respondent is liable to pay and finally stated that the compensation claimed by the petitioner is high and excessive and prayed the Court to dismiss the petition.

6. The brief averments made in the counter filed by the second respondent are as follows:

The second respondent put the petitioner to prove the manner of accident, his age and income and stated that the petitioner has not made out any grounds to seek compensation and therefore, the petition is liable to be dismissed in limine and further stated that the crime vehicle bearing No.AP.25/E.2981 was not insured with the second respondent and policy was not in force and finally stated that the first respondent is solely responsible to pay the compensation and prayed the Court to dismiss the petition.

7. Basing on the above pleadings, the Tribunal framed three issues and to substantiate his claim, the petitioner got examined PWs.1 & 2 and got marked Exs.A.1 to A.26 on his behalf. On behalf of the respondents, no oral or documentary evidence was adduced.

8. After considering the oral and documentary evidence, the Tribunal

held that the accident occurred due to rash and negligent driving of the rider of the Scooter bearing No.AP.25/E.2981 and awarded compensation of Rs.65,000/- along with interest at 9% p.a. to the petitioner against both the respondents.

9. Being not satisfied by the award passed by the Tribunal, the petitioner preferred the present appeal.

10. The learned counsel appearing for the appellant/petitioner argued that the Tribunal has awarded meagre compensation to the petitioner; that though the petitioner sustained grievous injuries, the Tribunal has not awarded compensation for disability and future earnings and though the petitioner was in the hospital for about 24 days and underwent operations no amount was awarded. It is also argued that the Tribunal has not awarded future loss of income and also not applied the relevant multiplier while granting the compensation of disability and finally prayed the Court to enhance the compensation.

11. On the other hand, the learned counsel for the second respondent/Insurance Company argued that the petitioner was initially treated by Dr.C. Hari Prasad and the said doctor was not examined and due to the accident, working status of the petitioner will not change and the petitioner has not suffered any future loss and the Tribunal after considering all these aspects rightly awarded just and reasonable compensation and the said compensation awarded by the Tribunal needs no interference. It is also argued by the learned counsel for respondent that this Court in Appeal against Order No.3518 of 2004 dated 09.11.2004 directed not to act solely on the evidence of PW.2- Dr.L.Ramulu doctor while awarding compensation.

12. Having regard to the submissions made by the learned counsel appearing for both the parties, the points which are to be decided in this appeal are as follows:

1. Whether the compensation awarded by the Tribunal is just

and reasonable?

2. Whether the appellant/petitioner is entitled for enhancement of compensation as prayed for?

13. **P O I N T S:** From the perusal of the oral evidence of PW.1 coupled with Ex.A1-certified copy of the First Information and Ex.A2-certified copy of the charge sheet, it is proved that the accident occurred due to rash and negligent riding of the rider of the Scooter bearing No.AP.25/E.2981, due to which the petitioner received injuries. Therefore, this finding of the Tribunal regarding the manner of accident needs no interference.

14. Coming to the quantum of compensation awarded by the Tribunal is concerned, a perusal of the record shows that the Tribunal has rightly not considered the evidence of PW.2, who examined the petitioner on 06.01.2003 i.e., about five years after the accident. Ex.A3 is the medical certificate issued from the hospital of Dr. C. Hari Prasad, who categorically held that the petitioner sustained fracture to tibia and he was hospitalised from 12.08.1998 to 06.09.1998 and the said injury is grievous in nature. Considering Ex.A6 and other evidence, the Tribunal rightly awarded Rs.20,000/- under the head of treatment and medical expenses. Further, the Tribunal has also rightly awarded Rs.10,000/- under the head of loss of earnings. The main contention of the petitioner is that he owns Ac.25.00 of land and due to the injury he is unable to do any work and therefore, the future income of the petitioner has to be calculated by using relevant multiplier. In this regard, it is to be seen that Exs.A22 to A25 are the letter heads and the Tribunal rightly observed that nothing has been written in Exs.A22 to A25. Further, if really the petitioner is having Ac.25.00 of land, he must have produced the receipt issued by the Agricultural Market Committee and also the income certificate from the revenue department. The Tribunal rightly considered that petitioner was about 24 days in the private hospital and awarded Rs.5,000/- towards extra nourishment and Rs.10,000/- towards pain and

suffering. Even the petitioner failed to prove his disability by producing the cogent evidence, but the Tribunal reasonable awarded Rs.20,000/- under this head. Thus, the Tribunal rightly after considering the evidence of PW.1 and Exs.A1 to A26, awarded just and reasonable compensation of Rs.65,000/- and the said finding of the Tribunal regarding the quantum of compensation needs no interference and further, the petitioner has not made out any ground for enhancement of compensation.

15. Accordingly, the appeal is dismissed. No order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

ANIS, J

Date: 21.08.2015
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