

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.1124 OF 2009

JUDGMENT:

1 This appeal is filed under Section 173 of M.V. Act, assailing the judgment and award dated 02.01.2009 passed in M.V.O.P.No.309 of 2007 on the file of the Motor Accidents Claims Tribunal-cum-Principal District Court, Khammam, the claimant filed the present appeal.

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 22.12.2006 the petitioner was proceeding on his cycle towards Khammam. When he reached Ballepalli bus stage, the driver of Trolley Auto bearing No.AP-20-W-9143 had driven the same in a rash and negligent manner and hit the cycle of the petitioner. The accident occurred due to the rash and negligent driving of the driver of the Trolley Auto, against whom the Station House Officer, Khanapuram Haveli registered a case in Cr.No.267 of 2006 under section 337 IPC. Subsequently the section of law was altered to Section 338 IPC. The petitioner sustained multiple and grievous injuries on various parts of body and took treatment as inpatient in the Dr. Sunil Kumar Nursing Home. Due to fracture and injuries, the petitioner could not attend his work for a long time, thereby lost his income. By the date of accident, the petitioner was aged 31 years and used to earn Rs.3,000/- p.m. The Trolley Auto bearing No.AP-20-W-9143, which belongs to the first respondent was insured with the second respondent with effect from 27.7.2006 to 26.7.2007. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioner. Hence the petitioner filed the claim petition seeking compensation of Rs.1.00 lakh from the respondents.

5 First respondent filed counter denying the material averments made in the petition *inter alia* contending that the accident occurred due to the rash and negligent act of the petitioner and that there was no negligence on the part of the driver of the Trolley Auto. The Trolley Auto bearing No.AP-20-W-9143, which belongs to this respondent was validly insured with the second

respondent as on the date of accident. Hence the second respondent alone is liable to pay compensation, if any, to the petitioner. Hence the petition may be dismissed.

6 Second respondent filed counter denying the material averments made in the petition *inter alia* contending that the accident occurred due to the rash and negligent act of the petitioner and that there was no negligence on the part of the driver of the Trolley Auto. It is further contended that the first respondent, in collusion with the petitioner, has not reported the matter to this respondent. The driver of the Trolley Auto bearing No.AP-20-W-9143 was not having valid driving licence to drive the crime vehicle as on the date of accident. Therefore, there is no contractual obligation on the part of this respondent to indemnify the liability of the first respondent. 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.

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

- i. Whether the accident took place due to rash and negligent driving of the accident vehicle, Trolley auto bearing no.AP-20-W-9143 by its driver?
- ii. Whether the petitioner is entitled to claim compensation? If so, to what amount and from which of the respondents?
- iii. To what relief?

8 During the course of trial, on behalf of the petitioner P.Ws.1 and 2 were examined and Exs.A.1 to A.8 were marked. On behalf of the respondents no oral evidence was let in, but copy of the insurance policy was marked as Ex.B.1.

9 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 Trolley Auto bearing No.AP-20-W-9143, which resulted injuries to the petitioner and allowed the petition in part by awarding compensation of Rs.35,000/- with interest at 7.5% p.a. and directed the respondent Nos.1 and 2 to deposit the same jointly and severally. Being dissatisfied with the said amount of compensation, the claimant filed the present appeal.

10 Sri Palle Srihari Nath, the learned counsel for the petitioner submitted that the Tribunal has not considered various documents filed by the petitioner and awarded meagre amount of compensation. He further submitted that the Tribunal failed to consider that the petitioner incurred permanent disability. He further submitted that the amount of compensation awarded by the Tribunal under various heads is too meagre.

11 *Per contra*, Sri T. Mahender Rao, the learned counsel for the second respondent submitted that the Tribunal has rightly considered the oral and documentary evidence in right perspective and awarded just and reasonable compensation. He further submitted that there are no grounds much less valid grounds to interfere with the well considered judgment and award passed by the Tribunal.

12 Now the point that falls for consideration in this appeal is:

“Whether the compensation awarded by the Tribunal is just and reasonable or not?”

Point:

13 The finding of the Tribunal that the accident occurred due to the rash and negligent driving by the driver of the Trolley Auto bearing No.AP-20-W-9143 became final in view of non-filing of 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 Trolley Auto bearing No.AP-20-W-9143, which resulted injuries to the petitioner.

14 As per the oral testimony of P.W.1, due to accident, he sustained fracture and injuries on various parts of the body and took treatment in the hospital of Dr.Sunil Kumar. As per the oral testimony of P.W.2 (Dr.Sunil Kumar), the petitioner took treatment in his hospital from 26.12.2006 to 07.01.2007. As per the testimony of P.W.2, the petitioner sustained commuted fracture to right tibia and one injury on right knee. As per Ex.A.3 - wound certificate, the petitioner sustained fracture to right tibia and one simple injury. The testimony

of P.W.1 is supported by the oral testimony of P.W.2 and Ex.A.3 so far as the nature of injuries sustained by him. Due to fracture and injuries, the petitioner might have suffered a lot. Taking into consideration the nature of injuries and fracture sustained by the petitioner, i am inclined to award an amount of Rs.15,000/- towards pain and suffering.

15 After scrutinising various medical bills filed by the petitioner, the Tribunal came to the conclusion that the petitioner produced some dubious medical bills in order to claim more compensation. The Tribunal had rightly awarded an amount of Rs.10,000/- towards medicines. Due to injuries, the petitioner might not have attended to his work at least for a period of three months, including the period of treatment. Hence I am inclined to award an amount of Rs.9,000/- towards loss of earnings.

16 Taking into consideration the nature of fracture sustained by the petitioner, I am inclined to award an amount of Rs.1,000/- towards extra nourishment and incidental expenses.

17 A perusal of the record reveals that the petitioner filed disability certificate issued by the Medical Board – Ex.A.4. For one reason or the other, the petitioner did not choose to examine the person who issued the disability certificate. The fact remains that the petitioner incurred some disability. Taking into consideration the nature of disability incurred by the petitioner, the Tribunal awarded an amount of Rs.25,000/- towards partial disability.

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

Pain and suffering: Rs.15,000/-

Medicines and treatment: Rs.10,000/-

Extra nourishment: Rs.1,000/-

Loss of earnings: Rs.9,000/-

Partial disability: Rs.25,000/-

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Total: Rs.60,000/-

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19 The compensation awarded under the above heads is just and reasonable to meet the ends of justice. The petitioner is also entitled to interest at 7.5% p.a. on the enhanced amount of compensation from the date of filing of the petition till the date of deposit.

20 In the result, the appeal is allowed in part, the amount compensation awarded by the Tribunal is enhanced from Rs.35,000/- to Rs.60,000/- with interest at 7.5% p.a. throughout. The respondent Nos.1 and 2 is directed to deposit jointly and severally. No order as to costs. As a sequel, miscellaneous petitions pending in this appeal, if any, shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 10th April, 2015.

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