

HON'BLE SMT JUSTICE ANIS

M.A.C.M.A.No.2033 of 2005

JUDGMENT:

This appeal is filed by the appellant/petitioner under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the award dated 10.01.2005, passed by the Chairman, Motor Vehicle Accident Claims Tribunal-cum-III Additional District Judge, Kakinada, in O.P.No.39 of 2003, awarding compensation of Rs.21,250/-.

2. The appellant/petitioner filed the above O.P under Section 166 of the Act read with Rule 455 of the Andhra Pradesh Motor Vehicle Rules, 1989 (for short 'the Rules'), claiming compensation of Rs.1,20,000/-, on account of the injuries sustained by him in a motor vehicle accident that occurred on 30.07.2002.

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 as follows:

On 30-07-2002, the petitioner and his son boarded the auto bearing No. AP 5X 8092 in Kakinada to go to P.Mallavaram village. When the auto reached outskirts of Coringa, the 1st respondent driven the auto in a rash and negligent manner and dashed against the opposite lorry, as a result of which, the petitioner received fracture to his right leg and also received injuries on various parts of the body and took treatment as inpatient in Government General Hospital, Kakinada. The Station House Officer, Coringa registered a case in Cr.No.70 of 2002 for the offence punishable under Section 338 IPC against the 1st respondent. The petitioner stated that prior to accident, he was earning Rs.700/- per month as Pastor as well as milk vendor. Due to fracture, the petitioner could not able to attend his regular work and thereby lost his earnings. Respondents 1 and 2 are the driver and owner of the auto respectively and 3rd respondent is the insurer. Respondents 1 to 3 are jointly liable to pay compensation to the petitioner.

5. The averments made in the counter filed by the respondents 1 and 2 are as follows:

The respondents put the petitioner to prove the manner of accident and the injuries received by the petitioner and denied that the accident occurred due to rash and negligent driving of the 1st respondent and contended that the accident occurred only due to negligence of the

petitioner and finally stated that the 2nd respondent insured the vehicle with the 3rd respondent at the time of accident and therefore, 3rd respondent alone is liable to pay compensation and finally prays the Court to dismiss the petition.

6. The averments made in the counter filed by the 3rd respondent are as follows:

This respondent put the petitioner to prove the manner of accident, his age and income and also stated that the 1st respondent does not have any valid driving licence at the time of driving the vehicle and 2nd respondent did not inform about the accident in collusion with the petitioner in view to cause loss to this respondent and this respondent is not aware of the criminal proceedings. The present petition is not maintainable for not impleading the driver, owner and insurer of the lorry and finally stated that the compensation claimed by the petitioner is high and excessive and prayed the Court to dismiss the petition.

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

1. Whether the accident had occurred due to the rash and negligent driving of driver of auto bearing No. AP 5 X8092?

2. Whether the petitioner is entitled for compensation, if so, to what amount and from which of the respondents?

3. To what relief?

8. To substantiate the claim, the petitioner himself was examined as P.W.1 and got marked Exs.A.1 to A.5 on his behalf. On behalf of the respondents, R.W.1 was examined and Exs.B1 to B5 were marked.

8. After considering the oral and documentary evidence, the Tribunal held that the accident was occurred due to rash and negligent driving of the driver of the auto bearing No.AP.5X 8092 and awarded compensation of Rs.21,250/- along with future interest at 9% p.a to the petitioner payable by the respondents.

9. Being not satisfied with 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 not considered the injuries received by the petitioner and no compensation was awarded under the head of injuries. He also argued that in the accident, the petitioner sustained three

grievous injuries and the same was proved under Ex.A2. He also argued that the Tribunal has not awarded any compensation for the disability suffered by the petitioner in the accident and finally prayed the Court to grant compensation for the injuries and for loss of earnings.

11. On the other hand, the learned standing counsel appearing for the Insurance Company opposed for grant of any further compensation on the ground that the Tribunal after considering the oral and documentary evidence, rightly granted just and reasonable compensation to the petitioner and the findings of the Tribunal need no interference and prayed the Court to dismiss the appeal.

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:** A perusal of the evidence of P.W.1 and documents Exs.A1 and A3 would go to show that the accident occurred due to rash and negligent driving of the auto bearing

No. AP 5X 8092 by the 1st respondent and the said finding of the Tribunal needs no interference by this Court.

14. Insofar as the quantum of compensation is concerned, P.W.1 in his evidence categorically stated that he sustained three grievous injuries and the same was evident from Ex.A2-wound certificate. Further as per Ex.A2, the petitioner suffered 20% disability and the Tribunal has not considered this aspect. It is contended by the learned counsel for the petitioner that due to grievous injuries, the petitioner is unable to do any work during that period and the compensation awarded towards loss of earning is meagre. A perusal of Ex.A2 clearly shows that the petitioner sustained three grievous injuries and the Tribunal has not awarded any compensation for the three grievous injuries. Therefore, considering the evidence of P.W.1 and Ex.A2, the petitioner is entitled for a sum of Rs.30,000/- towards compensation for the three grievous injuries sustained by him.

15. Coming to the loss of income is concerned, according to the petitioner, due to injuries, he is unable to do any work even after taking treatment and he suffered 20% disability. Ex.A4 is the disability

certificate. Admittedly, P.W.1 has not examined the doctor who treated him and issued Ex.A4. A perusal of Ex.A4 would go to show that it was not issued by the competent medical board. Therefore, the Tribunal rightly discarded Ex.A4. Since the petitioner sustained three grievous injuries as per Ex.A2, another sum of Rs.2,250/- is awarded towards loss of earnings in addition to the amount already awarded under this head. Thus, the petitioner is entitled for a sum of Rs.32,250/- towards compensation apart from the compensation already awarded. In total, the petitioner is entitled compensation of Rs.53,500/- (Rs.32,250/- + Rs.21,250/-)

16. In view of the above discussion, the appeal is partly allowed enhancing the compensation awarded by the Tribunal to the appellant/petitioner from Rs.21,250/- to Rs.53,500/- along with interest at 7.5% p.a on the enhanced amount from the date of appeal till the date of realisation in view of the different rates of interest granted by the Hon'ble Supreme Court in the decisions reported in ***Sanobanu Nazirbhai Mirza and others v. Ahmedabad Municipal Transport Service***^[1] and ***Rebeka Minz and others v. Divisional Manager, United India Limited Insurance Company Limited and another***^[2]. No order as to costs.

17. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

ANIS, J

DATED: 27-11-2015

Hsd

^[1] 2013 ACJ 2733

^[2] 2012 ACJ 2328