

HON'BLE SMT JUSTICE ANIS

CIVIL MISCELLANEOUS APPEAL No.3478 of 2004

J U D G M E N T:

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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 17.02.2004, passed by the Chairman, Motor Vehicle Accident Claims Tribunal-cum-V Additional District Judge, (Fast Track Court), Ranga Reddy District at L.B.Nagar, in O.P.No.51 of 2000, awarding compensation of Rs.8,000/-.

2. The appellant/petitioner filed the above O.P under Section 166 of the Act, claiming compensation of Rs.1,00,000/-, on account of the injuries sustained by him in a motor vehicle accident that occurred on 27.12.1999.

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 27.12.1999 at about 7:00 p.m, while the petitioner along with others were travelling in an Auto bearing No.AP.11V.1027 from Maheshwaram towards Peddamma Tanda side and when it reached Kosla Garden in Sirigiripuram village, due to the rash and negligent driving of the driver of the Auto, it turned turtle, on account of which, the petitioner sustained injuries and was shifted to Osmania General Hospital, Hyderabad, for treatment. The police, Maheshwaram Police Station, registered the case in Cr.No.108 of 1999 against the driver of the said Auto. The petitioner sustained left leg hip fracture, soft tissue fracture and other multiple injuries all over the body and he used to earn Rs.2,500/- per month by doing work, and due to the accident, he lost his earning source of livelihood and he spent huge amounts for treatment, therefore prayed the Court to grant compensation.

5. Before the Tribunal, the first respondent remained *ex parte*.

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, age and income of the petitioner and denied that the driver of the Auto was rash and negligent while driving the Auto; that further, the compensation amount claimed by the petitioner is high and excessive and prayed the Court to dismiss the petition.

7. As the petitioner has suffered injuries in the accident along with others, the case of the petitioner was clubbed along with other cases of the persons, who sustained injuries in the same accident, and tried jointly.

8. Basing on the above pleadings, the Tribunal framed three issues and to substantiate the claim, the petitioner along with other injured got examined PWs.1 to 6 and got marked Exs.A.1 to A.6 on their behalf. On behalf of the contesting respondent, no oral or documentary evidence was adduced.

9. After considering the oral and documentary evidence, the Tribunal having held that the accident was caused due to rash and negligent driving of the driver of the Auto bearing No.AP.11V.1027, awarded compensation of Rs.8,000/- along with interest at 9% p.a against both the respondents.

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

11. The learned counsel appearing for the appellant/petitioner argued that the Tribunal has not granted any compensation towards pain and sufferings, extra nourishment and transportation charges; that the petitioner was admitted in the hospital and took treatment for two days

and due to the accident, he was unable to do any work; that the Tribunal has granted very meagre amount of Rs.8,000/- instead of the claim of Rs.1,00,000/-, and therefore, prayed the Court to enhance the compensation.

12. The appeal against the first respondent was dismissed for default vide C.O. dated 23.03.2011.

13. On the other hand, the learned counsel appearing for the second respondent argued that the Tribunal after considering the oral and documentary evidence passed the award by granting just and reasonable compensation; that the said finding needs no interference and prayed the Court to dismiss the appeal.

14. 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?

15. **P O I N T S:** After perusing the oral and documentary evidence, there is no dispute about the fact that the accident was caused due to rash and negligent driving of the driver of the Auto bearing No.AP.11V.1027.

16. So far, the quantum of compensation is concerned, the petitioner got marked Exs.A1 to A6 on his behalf. A perusal of the charge sheet- Ex.A2 filed by all the injured persons including the petitioner shows that on 27.12.1999 at about 7:00 p.m, while the petitioner was travelling in the Auto bearing No.AP.11V.1027 from Maheshwaram village towards Sirigiripuram village, the driver of the Auto drove the vehicle in a rash and negligent manner, due to which the Auto turned turtle and the petitioner sustained injuries. After the accident, the petitioner took

treatment in the Osmania General Hospital, Hyderabad, and filed Ex.A4-Medical Discharge Card. A perusal of these documents shows that the petitioner sustained only two simple injuries by way of abrasions and he was admitted in the hospital on 27.12.1999 and discharged on 29.12.1999. Therefore, it is clear that the petitioner was admitted and took treatment in the hospital for about two days. Admittedly, the treatment in Osmania General Hospital, Hyderabad, is free of cost. Therefore, considering all these aspects, the Tribunal rightly awarded lumpsum amount of Rs.8,000/- as just and reasonable compensation.

17. A perusal of the award shows that the Tribunal has not granted any compensation to the petitioner towards pain and sufferings, extra nourishment and transportation charges. Considering the plea of the learned counsel for the appellant/petitioner, I am of the view that an amount of Rs.2,000/- shall be awarded towards pain and sufferings, Rs.500/- shall be awarded towards extra nourishment and Rs.500/- shall be awarded towards transportation charges. Therefore, in total an amount of Rs.3,000/- shall be awarded to the petitioner under the above heads apart from the compensation awarded by the Tribunal. Thus, the appellant is entitled for a total amount of Rs.11,000/-.

18. In view of the above discussion, the appeal is partly allowed enhancing the compensation awarded by the Tribunal to the appellant from Rs.8,000/- to Rs.11,000/-. No order as to costs.

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

ANIS, J

Date: 22.06.2015
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