

HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A. No.781 OF 2009

JUDGMENT:

This appeal is filed by the claimant challenging the judgment and award dated 29.8.2006 passed in O.P. No.493 of 2001 (*old O.P.No.460 of 2000 on the file of District Judge, Karimnagar*) on the file of the XI Additional Chief Judge, City Civil Court (Fast Track Court), Hyderabad.

2. The parties hereinafter will be referred to as they are arrayed before the Tribunal to avoid confusion.

3. The petitioner filed the petition under Section 166 of the Motor Vehicles Act, 1988 claiming a compensation of Rs.3,00,000/- for the injuries sustained by her in a motor vehicle accident that occurred on 25.9.1998. The case of the petitioner is that on 25.9.1998, the petitioner along with her son and other family members was proceeding from Hyderabad to Pedapalli in Maruti Car bearing No.AP 15G 5000. When the car reached near Lakudaram village, the driver of Ambulance van bearing No.AP 9B 4281 had driven the same in a rash and negligent manner and dashed against the Maruti Car in opposite direction. Due to the accident, the petitioner sustained grievous injuries to her left thigh, right eye and other parts of the body. The petitioner took treatment as in-patient in Nizam's Institute of Medical Sciences (NIMS), Hyderabad from 25.9.1998 to 30.10.1998 and underwent operation. The Station House Officer, Siddipet Rural Police Station registered a case in Crime No.145 of 1998 under Section 337 IPC, and after completion of investigation charge sheet was filed against the first respondent-driver of the Ambulance under Sections 304-A and 338 IPC. The second respondent is owner of the Ambulance and the third respondent is insurer of the Maruti Car. Hence, the petition.

4. The first respondent–driver of the Ambulance remained ex parte. The second respondent-owner of the Ambulance filed counter denying the averments in the petition and, *inter alia*, contended that the driver of the Maruti Car came in wrong route and dashed against the Ambulance resulting in death of son of the petitioner. There was no rashness or negligence on the part of the driver of the Ambulance.

5. The third respondent filed counter denying all the averments made in the petition and, *inter alia*, contended that the petitioner sustained simple injuries. The amount of compensation claimed by the petitioner, under various heads, is highly excessive and exorbitant. The accident was occurred due to rash and negligent driving of the driver of the Ambulance. Maruti Car in question was not insured with the third respondent as on the date of accident. The third respondent also filed additional counter contending that as per the recitals of F.I.R., the negligence was on the part of the driver of Ambulance and, therefore, the third respondent is not liable to pay any compensation to the petitioner. Hence the petition may be dismissed.

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

- 1) Whether the petitioner received injuries in the accident on account of the rash and negligent driving of Ambulance Van bearing No.AP 9B 4281 by its driver?
- 2) Whether the petitioner is entitled to any compensation and if so, to what amount and from whom?
- 3) To what relief?

7. During the course of trial, on behalf of the petitioner, P.Ws.1 and 2 were examined and Exs.P.1 to P.10 were marked. On behalf of the second respondent, R.Ws.1 and 2 were examined and Exs.R1 was marked. Basing on the oral and documentary evidence available on record, the Tribunal arrived at a conclusion that the accident was occurred due to rash and negligent driving of driver of the Ambulance

and allowed the petition in part awarding an amount of Rs.57,245/- towards compensation to the petitioner with costs and interest at 7.5% per annum from the date of the award till the date of payment, directing the respondent Nos.1 and 2 (driver and owner of the Ambulance) to pay the compensation jointly and severally. The petition against the third respondent-insurer of the Maruti Car is dismissed. Being not satisfied with the quantum of compensation and the date of effect of rate of interest, the claimant preferred the present appeal.

8. The second respondent remained ex parte having received notice in this appeal.

9. The contention of learned counsel for the appellant-petitioner is two fold: (1) the Tribunal awarded meager amount without considering various documents filed by the petitioner; and (2) the Tribunal ought to have granted interest from the date of petition instead of date of award.

10. Now the points that would arise for consideration are :

(1) Whether the Tribunal has awarded just and reasonable compensation?

(2) Whether the petitioner is entitled to interest from the date of the petition?

Point Nos.1 and 2:

11. Both the points are interlinked with each other. Hence I am inclined to address both the points simultaneously in order to avoid repetition.

12. As per the finding of the Tribunal, the accident occurred due to rash and negligent driving of the driver of the Ambulance. For one reason or the other, the second respondent did not choose to file appeal challenging the said finding. Hence, the finding of the Tribunal on Issue No.1 with regard to manner of accident and the factum of

sustaining injuries by the petitioner became final. A perusal of the record reveals that the Tribunal awarded compensation under the following heads:

	Rs.	
(1) Pain and suffering	:	10,000
(2) Injuries	:	35,000
(3) Medical and Transport expenses	:	6,245
(4) Loss of earnings	:	6,000
Total		57,245

13. The oral testimony of P.W.1 coupled with Exs.P4 and P10 medical certificate and discharge record respectively, reveals that the petitioner sustained three grievous injuries. As per the testimony of P.W.2-Doctor, the petitioner sustained one grievous injury and four simple injuries. The Tribunal awarded an amount of Rs.45,000/- under the heads ‘pain and suffering’ and ‘injuries’. Though the Tribunal awarded the amount under two different heads, the amount awarded has to be treated for ‘pain and suffering’ only. Taking into consideration the nature of injuries sustained by the petitioner, I am of the considered view that an amount of Rs.45,000/- towards pain and suffering is just and reasonable. The petitioner produced medical bills – Exs.P5 to P7 for an amount of Rs.4,244.50 ps. The Tribunal an amount of Rs.4,245/- towards medical bills. A perusal of the record clearly reveals that the Tribunal awarded just and reasonable compensation towards medicines. The Tribunal also awarded an amount of Rs.6,000/- towards loss of earning on the ground that the petitioner might not have attended to her work for a period of three months, taking income of the petitioner notionally at Rs.2,000/- per month. A perusal of the record reveals that the Tribunal has taken into consideration the oral and documentary evidence while granting compensation under various heads. The Tribunal has assigned

cogent and valid reasons to its findings. The compensation awarded under various heads is fair, just and reasonable. There are no grounds much less valid grounds to interfere with the findings recorded by the Tribunal so far as the quantum of compensation is concerned.

14. A perusal of the record reveals that the Tribunal awarded interest at 7.5% per annum from the date of award till the date of payment. It appears that the Tribunal has not considered the scope of Section 171 of M.V. Act while awarding interest. It is a settled principle of law that the Tribunal has to award interest from the date of petition till the date of realization. The finding of the Tribunal that the petitioner is entitled for interest at 7.5% per annum from the date of award is not sustainable in view of Section 171 of M.V. Act. Therefore, I am of the considered view that the petitioner is entitled to interest at 7.5% per annum from the date of petition (instead of date of award) till realization.

15. In the result, the appeal is allowed in part confirming the quantum of compensation awarded to the petitioner i.e., Rs.57,245/- with proportionate costs and interest at 7.5% per annum from the date of petition i.e., 26.8.2000 (instead of date of award i.e., 29.8.2006) till the date of realization. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

T.SUNIL CHOWDARY, J

Date: 29.1.2015

YS