

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY
M.A.C.M.A. No.863 OF 2009

JUDGMENT:

1 Dissatisfied with the judgment and award dated 17.05.2007 passed in M.V.O.P.No.66 of 2004 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-VII Additional District & Sessions Judge, Mahabubnagar, wherein and whereby an amount of Rs.28,000/- was awarded as compensation, the claimant filed the present appeal, seeking higher compensation.

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 22.10.2003 at 7.45 PM, after attending hamali work, the petitioner boarded a Jeep at Wanaparathi to go to his native place Savaigudem. When the Jeep reached Peddagudem cross roads, the driver of the Jeep bearing No.AAM-T-3330 came in opposite direction in a rash and negligent manner and hit the Jeep in which the petitioner was travelling due to which the petitioner sustained multiple injuries. The accident occurred due to the rash and negligent driving of the driver of the Jeep bearing No.AAM-T-3330 against whom the Station House Officer, Wanaparathi Rural Police Station registered a case in Cr.No.52 of 2003 for the offence punishable under Section 338 IPC. In the said accident, the petitioner sustained injuries and took treatment as inpatient in Government Area hospital, Wanaparathi and Government General Hospital, Kurnool. The petitioner spent an amount of Rs.70,000/- towards treatment. By the date of accident, the petitioner was aged about 30 years and used to earn Rs.100/- per day as hamali. Due to the fractures, the petitioner could not attend work

for a long time, thereby lost his income. The petitioner also sustained disability. Hence the petitioner filed the claim petition seeking compensation of Rs.3.00 lakhs from the respondents jointly and severally. The Jeep bearing No.AAM-T-3330 which belongs to the first respondent was insured with the second respondent with effect from 09.12.2002 to 08.12.2003. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioner.

5 First respondent remained ex *parte*. Second respondent filed counter denying the material averments inter *alia* contending that the accident occurred due to the rash and negligent driving of the drivers of both the Jeeps. The petition is not maintainable for non-impleading of the owner and insurer of the other Jeep. The amount of compensation claimed by the petitioner under various heads is excessive and exorbitant. The driver of the Jeep was not having valid and effective driving licence as on the date of accident. Therefore, this respondent is not liable to pay compensation to the petitioner. Hence the petition may be dismissed.

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

- i. Whether the accident occurred on 22.10.2003 is due to negligence of driver of Jeep bearing No.AAM-T-3330 and petitioner sustained injuries?
- ii. Whether the petitioner is entitled to compensation? If so, to what amount and against whom?
- iii. To what relief?

7 During the course of trial, on behalf of the petitioner P.Ws.1 and 2 were examined and Exs.A.1 to A.11 were marked. On behalf of the respondents no oral evidence was let in, but a copy of the insurance police was marked as Ex.B.1.

8 On appreciation of the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the Jeep bearing No.AAM-T-3330 and allowed the petition in part by awarding compensation of Rs.23,000/- with interest at 7.5% p.a from the date of filing of the petition till the date of realisation and directed the respondent Nos.1 and 2 jointly and severally to pay compensation to the petitioner.

9 The learned counsel for the petitioner submitted that the Tribunal has not considered the testimony of P.W.1 and recitals of Ex.A.8 in right perspective. He further submitted that the amount of compensation awarded under various heads is too meagre.

10 Per contra, the learned counsel for the insurance company submitted that the Tribunal awarded just and reasonable compensation and hence the judgment and award impugned in this appeal does not warrant interference from this Court.

11 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:

12 There is no much dispute between the parties with regard to the manner of accident and the nature of injuries sustained by the petitioner. As per the finding of the Tribunal, the accident occurred due to the rash and negligent driving of the driver of the Jeep bearing No.AAM-T-3330. The respondents did not choose to file appeal or cross objections challenging the finding of the Tribunal on issue No.1. Therefore, the finding of the Tribunal on issue No.1 has become final. Hence, there is no necessity to discuss the said issue elaborately in this appeal. I am fully agreeing with the finding of the

Tribunal that the accident occurred due to the rash and negligent driving of the driver of the Jeep bearing No.AAM-T-3330.

13 The Tribunal awarded an amount of Rs.20,000/- towards pain and suffering, Rs.5,000/- towards transportation charges and Rs.3,000/- towards loss of earnings. Thus, the total amount of compensation awarded by the Tribunal comes to Rs.28,000/-. But inadvertently, in the operative portion of the judgment and award, it was mentioned that the petitioner is entitled to Rs.23,000/- as compensation. Therefore, it should be construed that the petitioner is entitled to Rs.28,000/- as compensation as per the judgment of the Tribunal.

14 I have carefully gone through the oral testimony of P.W.1 and the various documents filed by him. The fact remains that the petitioner took treatment as inpatient in Area hospital, Wanaparathi and Government General Hospital, Kurnool. The petitioner filed medical bills worth of Rs.46,458/- (Ex.A.10). As per the medical bills, the petitioner purchased medicines as prescribed by Dr. K.Seshaiah. It is not the case of the petitioner that he took treatment in the hospital of said K. Seshaiah and purchased medicines in Santosh Medical & General Stores, Pentalavelli. The Tribunal has rightly rejected these medical bills.

15 The petitioner sustained fractures and other injuries. It is a known fact that a patient who took treatment in Government hospital has to purchase medicines from outside. Taking into consideration the nature of injuries sustained by the petitioner, I am inclined to award an amount of Rs.5,000/- towards purchase of medicines. Due to fracture, the petitioner might not have attended his work for a period of two months. Hence I am inclined to award an amount of Rs.6,000/- towards loss of income instead of Rs.3,000/- as awarded

by the Tribunal.

16 The oral testimony of P.W.2 coupled with Ex.A.8 reveals that the petitioner sustained 20% partial disability to right leg. The oral testimony of P.W.2 clearly reveals that the petitioner sustained disability due to delay in taking treatment by him. The petitioner himself is equally responsible to sustain the disability to the extent of 20% partial. It is needless to say that functional disability cannot be equated with the loss of earnings. The so called disability may not adversely effect the earning capacity of the petitioner. Due to disability, the petitioner may not enjoy his normal life like others. Having regard to the facts and circumstances of the case, I am inclined to award an amount of Rs.25,000/- towards loss of future amenities. Thus, the compensation under different heads, which the petitioner is entitled to, would come as under:

<u>Pain and suffering:</u>	
<u>Rs.20,000/-</u>	
<u>Transportation and extra nourishment:</u>	<u>Rs. 5,000/-</u>
<u>Loss of earnings:</u>	<u>Rs.</u>
<u>6,000/-</u>	
<u>Purchase of medicines:</u>	<u>Rs.</u>
<u>5,000/-</u>	
<u>Loss of future amenities:</u>	<u>Rs.25,000/-</u>
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	<u>TOTAL</u>
<u>Rs.61,000/-</u>	
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17 The amount of compensation awarded under various heads is just and reasonable to meet the ends of justice. The petitioner is also entitled for interest at 7.5% p.a. on the enhanced amount of compensation from the date of filing of the petition till the date of realisation. Since the Jeep bearing No.AAM-T-3330 which belongs to the first respondent was validly insured with the second respondent,

by the date of accident, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioner.

18 In the result, the appeal is allowed in part, the amount compensation awarded by the Tribunal is enhanced from Rs.23,000/- (sic. 28,000/-) to Rs.61,000/- with interest at 7.5% p.a. from the date of filing of the petition till the date of realisation. Parties are directed to bear their costs in this appeal. The respondent Nos.1 and 2 are hereby directed to deposit the enhanced amount of compensation within two months from the date of receipt of this judgment together with interest at 7.5% p.a. from the date of filing of the petition till the date of realisation. On such deposit, the petitioner is entitled to withdraw the entire amount. As a sequel, miscellaneous petitions, pending in this miscellaneous appeal, if any, shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 2nd March, 2015.

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