

HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A. No.1153 of 2009

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act by the claimant challenging the judgment and award dated 06.3.2007 passed in O.P. No.494 of 2003 on the file of the Motor Accidents Claims Tribunal-cum-III Additional District Judge (Fast Track Court), Asifabad.

2. The parties will hereinafter be referred to as they are arrayed before the Tribunal for the sake of convenience.

3. The facts leading to filing of the present petition, in brief, are as follows: On 29.6.2002, at 8.30 A.M., The petitioner was proceeding in auto bearing No.AP 1U 3255 from Bellampalli to Mandamarri. When the auto reached near Sri Laxmi Hotel on BT Road at Somagudem, the driver of the Tipper bearing No.AP 16U 3578 had driven the same in a rash and negligent manner and hit the auto. The accident occurred due to the rash and negligent driving of driver of the Tipper against whom the Station House Officer, Kasipet Police Station registered a case in Crime No.55 of 2003 under Section 337 IPC. In the accident, the petitioner sustained fracture and injuries on various parts of the body and the auto was damaged. Immediately after the accident, the petitioner was shifted to Government Area Hospital, Mancherial. The petitioner also took treatment as inpatient in Osmania General Hospital, Hyderabad for a long time. By the time of the accident, the petitioner was aged about 27 years and used to earn Rs.5,000/- per month as owner-cum-driver of the auto. Due to the fracture and injuries, the petitioner could not attend to his work for a long time and thereby lost income. The Tipper bearing No.AP 16U 3578, which belongs to the first respondent, was insured with the second respondent with effect from 31.7.2001 to 30.7.2002 and therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.2,25,000/- to the petitioner with interest and costs.

4. The first respondent remained *ex parte*.

5. The second respondent filed counter denying all the averments made in the petition, *inter alia*, contending that the accident occurred due to the rash and

negligent driving of the driver of the auto and there was no negligence on the part of the driver of the Tipper. The present petition is not maintainable for non-impleading of the owner and insurer of the auto. 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.

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

1. Whether the petitioner sustained injuries in motor vehicle accident dated 29.06.2002 involving vehicle No.AP 16U 3578?
2. If so whether the accident took place on account of rash and negligent driving of the vehicle No.AP 16U 3578 by the driver of R1?
3. Whether the petitioner is entitled to compensation? If so, to what amount, from which of the respondent?
4. To what relief?

7. During the course of the trial, on behalf of the petitioner, P.W.1 was examined and Exs.A1 to A4 were marked. On behalf of the respondents, no oral or documentary evidence was adduced.

8. Basing on the oral, documentary evidence and other 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 Tipper, which resulted in the injuries to the petitioner, and allowed the petition in part by awarding compensation of Rs.26,500/- with interest at 7.5% per annum from the date of petition till the date of deposit, directing the respondent Nos.1 and 2 to pay the compensation. Being not satisfied with the quantum of compensation awarded by the Tribunal, the claimant preferred the present appeal.

9. Heard Sri Venkateswar Varanasi, learned counsel for the appellant–claimant and Sri T.Ramulu, learned standing counsel for the second respondent – insurance company.

10. Learned counsel for the claimant submitted that the Tribunal has not awarded any amount under the head ‘loss of earnings’ during the period of treatment. He further submitted that the Tribunal awarded meager amount towards compensation. ***Per contra***, learned counsel for the second respondent submitted that the Tribunal rightly considered various aspects and awarded just and reasonable compensation and therefore, the appeal is liable to be dismissed.

11. Now the point that arises for consideration in this appeal is:

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

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Point:

12. The Tribunal arrived at a conclusion that the accident occurred due to rash and negligent driving of the driver of the Tipper. The finding of the Tribunal, on issue No.1, became final in view of non-filing of appeal or cross-objections by the respondent Nos.1 and 2. The Tribunal has assigned cogent and valid reasons to its finding on issue No.1. Hence, I am of the considered view that the accident occurred due to the rash and negligent driving of the driver of the Tipper, which resulted in injuries to the petitioner.

13. A perusal of the record reveals that the petitioner sustained fracture to clavicle and took treatment for long time. Basing on the material available on record, the Tribunal awarded an amount of Rs.3,500/- towards repairs of the auto; Rs.2,000/- towards incidental charges; Rs.2,000/- towards extra nourishment; Rs.10,000/- towards pain and suffering; Rs.8,000/- towards medicines; and Rs.1,000/- towards transportation charges. In total an amount of Rs.26,500/- was awarded by the Tribunal.

14. The petitioner sustained fracture to clavicle and two grievous injuries. Due to the fracture and injuries, the petitioner might have suffered a lot. Taking into consideration the nature of fracture and injuries, I am inclined to award an amount of Rs.25,000/- towards pain and suffering instead of Rs.10,000/- as awarded by the Tribunal. By the time of the accident, the petitioner was auto driver by profession. In the petition, it is categorically mentioned that the petitioner used to earn Rs.5,000/- per month as auto driver. In the chief examination, P.W.1 in unequivocal terms stated that he used to earn Rs.3,000/- per month as auto driver. Surprisingly, the Tribunal arrived at the conclusion that the petitioner was a student and therefore, he is not entitled to any amount under the head 'loss of earnings'. The finding of the Tribunal that by the time of the accident the petitioner was student is not supported by the material available on record. Hence, the said finding of the Tribunal is not sustainable. Due to the fracture and grievous injuries, the petitioner might not have

attended to his work for a period of five months including the period of treatment. Even by attending any work, the petitioner may earn Rs.3,000/- per month. Hence, I am inclined to award (Rs.3,000 X 5) Rs.15,000/- towards loss of earnings. The amount of compensation awarded by the Tribunal, under the other heads, is just and reasonable. The petitioner is entitled to the compensation under the following heads:

Rs.

1. Pain and suffering : 25,000
2. Loss of earnings : 15,000
3. Medical expenditure : 8,000
4. Auto repairs : 3,500
5. Incidental charges : 2,000
6. Extra nourishment : 2,000
7. Transportation charges : 1,000

Total : 56,500

15. The petitioner is entitled to Rs.56,500/- towards compensation, which is just and reasonable to meet the ends of justice. Accordingly, the point is answered.

16. In the result, the appeal is allowed in part, enhancing the compensation from Rs.26,500/- to Rs.56,500/- with interest at 7.5% per annum from the date of petition till the date of deposit. The respondent Nos.1 and 2 shall jointly and severally deposit the same with proportionate costs and interest, within a period of two months from the date of receipt of a copy of this judgment. The miscellaneous petitions, pending in this appeal, if any, shall stand closed.

T.SUNIL CHOWDARY, J

Date: 07.4.2015

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