

HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A. No.1154 of 2009

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act by the claimant challenging the judgment and award dated 22.8.2005 passed in O.P. No.70 of 2001 on the file of the Motor Accidents Claims Tribunal-cum-I Additional District Judge, Nizamabad.

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 21.9.2000, at about 4.00 P.M., the petitioner was standing on the road margin at Nehru Park, Gandhari. In the mean while, the driver of the car bearing No.AP 25C 4565 had driven the same in a rash and negligent manner and hit the petitioner. The accident occurred due to rash and negligent driving of the driver of the car against whom the Station House Officer, Gandhari Police Station registered a case in Crime No.56 of 2000 under Section 338 IPC. Due to the accident, the petitioner sustained fracture to left leg and fracture to skull. The petitioner took treatment as inpatient in CDR Hospital, Hyderabad. The parents of the petitioner spent Rs.1,00,000/- towards medicines and treatment. The car bearing No.AP 25C 4565, which belongs to the first respondent, was insured with the second respondent with effect from 15.11.1999 to 14.11.2000. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.2,50,000/- 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 negligent act of the petitioner and there was no negligence on the part of the driver of the car. The first respondent violated the terms and conditions of the policy. Therefore, this respondent is not liable to pay compensation to the petitioner. 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 accident occurred on 25.7.2000 due to rash and negligent driving of the car bearing No.AP 25C 4565 by its driver?
2. Whether the petitioner is entitled to compensation? If so, to what amount and from whom?
3. To what relief?

7. During the course of the trial, on behalf of the petitioner, P.Ws.1 and 2 were examined and Exs.A1 to A35 were marked. On behalf of the respondents, no oral evidence was adduced, but Ex.B1 was marked.

8. After analyzing 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 car, which resulted in the injuries to the petitioner, and allowed the petition in part by awarding compensation of Rs.57,000/- with interest at 9% per annum from the date of petition till the date of deposit, directing the respondent Nos.1 and 2 to pay the compensation. Feeling aggrieved by 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 Smt.Pushpinder Kaur, learned standing counsel for the second respondent – insurance company.

10. The contention of the learned counsel for the claimant is two fold: (1) the Tribunal discarded Ex.A35 disability certificate on flimsy grounds; and (2) the amount of compensation awarded by the Tribunal is not just and reasonable. ***Per contra***, learned counsel for the second respondent submitted that the Tribunal rightly considered oral and documentary evidence available on record and awarded just and reasonable compensation.

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?

-

Point:

12. As per the finding of the Tribunal, on issue No.1, the accident occurred due to

rash and negligent driving of the driver of the car. 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. Having regard to the facts and circumstances of the case, I am of the considered view that the accident occurred due to the rash and negligent driving of the driver of the car, which resulted in injuries to the petitioner.

13. The oral testimony of P.Ws.1 and 2 coupled with Ex.A3 wound certificate clearly reveals that the petitioner sustained fracture to middle third of left femur. Taking into consideration the nature of the fracture sustained by the petitioner, the Tribunal rightly awarded an amount of Rs.27,500/- towards pain and suffering. The petitioner produced the medical bills obtained from CDR Hospital. Taking into consideration the medical bills (Exs.A16 to A20) produced by the petitioner, the Tribunal rightly awarded an amount of Rs.28,667/- towards medicines. The parents of the petitioners might have provided special diet to the petitioner for union of the fracture to left femur, but the Tribunal has not awarded any amount towards extra nourishment. Taking into consideration the nature of the fracture, I am inclined to award Rs.3,000/- towards extra nourishment. The petitioner has taken treatment in CDR Hospital, Hyderabad from 26.7.2000 to 02.8.2000. The parents of the petitioner might have spent some amount for transportation. Hence, I am inclined to award an amount of Rs.3,000/- towards transportation instead of Rs.1,000/- as awarded by the Tribunal.

14. As per the testimony of P.W.2, the petitioner incurred 55% disability. Ex.A35 is the disability certificate. It is not mentioned in Ex.A35 the reasons for incurring 55% of disability by the petitioner. P.W.2 (Doctor) simply mentioned that the petitioner incurred 55% disability. It is the duty of the Doctor to state the reasons much less cogent and valid reasons while assessing the disability sustained by the petitioner. In the cross-examination, P.W.2 in unequivocal terms deposed that the petitioner has not taken treatment in his Hospital or under his supervision. The testimony of P.W.2 reveals that he has not verified X-ray films before assessing the disability. His testimony further reveals that he did not advise the petitioner to take X-ray films in order to ascertain the disability. This itself clearly indicates the care and caution taken by P.W.2 while issuing disability certificate. If really the petitioner incurred disability, what prevented him to approach the Medical Board or CDR Hospital to obtain disability certificate. If this court places reliance on this type of disability certificates, certainly it would cause financial loss to the insurance companies.

Taking all these aspects into consideration, the Tribunal rightly discarded Ex.A35 disability certificate.

15. The fact remains that the petitioner might have incurred some disability due to the fracture to the left femur. Due to the restriction of the movement of left femur, the petitioner may not enjoy his life like a normal person. By the time of the accident, the petitioner was aged about 8 years. The fracture incurred by the petitioner, undoubtedly, causes some sort of inconvenience to him in future also. The Tribunal or court shall not lose sight of these aspects. No doubt, the petitioner was not an earning member as on the date of the accident. Taking into consideration the facts and circumstances of the case, I am of the considered view that awarding an amount of Rs.50,000/- towards loss of future amenities would be just and reasonable. Thus, the compensation awarded the petitioner, under various heads, is as follows:

Rs.

- 1. Pain and suffering : 27,500
- 2. Medical expenditure : 28,667
- 3. Extra nourishment : 3,000
- 4. Transportation charges : 3,000
- 5. Loss of future amenities : 50,000

Total : 1,12,167

16. The petitioner is entitled to Rs.1,12,167/- 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.57,000/- to Rs.1,12,167/-. The petitioner is entitled to interest at 9% per annum on Rs.57,000/- as awarded by the Tribunal and at 7.5% per annum on the enhanced amount of Rs.55,167/- from the date of petition till the date of deposit. The respondent Nos.1 and 2 shall jointly and severally pay the same with interest and proportionate costs, 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: 08.4.2015

YS