

HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A. No.744 OF 2009

JUDGMENT:

This appeal is filed by the claimant assailing the judgment and award dated 25.8.2006 passed in M.V.O.P. No.565 of 2004 on the file of the Motor Accidents Claims Tribunal–cum-III Additional District Court, Kakinada.

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

The facts leading to filing of the present petition are briefly as follows: On 04.1.2004 at 4.00 PM the petitioner was proceeding to Turangi from Penuguduru on his cycle. When the petitioner reached Santhoshimatha Temple, Penuguduru, the driver of tanker lorry bearing No.AP 07T 0889 had driven the same in a rash and negligent manner and dashed against the cycle of the petitioner. Due to the accident, the petitioner fell down from the cycle and sustained multiple injuries on various parts of his body. Immediately after the accident, the petitioner was shifted to Government General Hospital, Kakinada, wherein he took treatment for long time. Due to the injuries sustained in the accident, the petitioner incurred permanent disability. The Station House Officer, Karapa Police Station registered a case in Crime No.3 of 2004 under Section 337 IPC against the first respondent-the driver of the tanker lorry. Hence, the petition is filed claiming compensation of Rs.1,00,000/- from the respondent Nos.1 to 3 jointly and severally with interest and costs.

The respondent Nos.1 and 2 remained ex parte. The third respondent filed counter denying all the averments made in the petition. It is contended that the accident occurred due to negligent act of the petitioner and there was no negligence on the part of the first respondent-driver. The tanker lorry did not involve in the alleged accident. The petitioner, in collusion with the Police, filed a false case

against the first respondent-driver of the tanker lorry. The amount of compensation claimed by the petitioner is highly excessive. Hence, the petition may be dismissed.

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

- 1) Whether the accident had occurred due to the rash and negligent driving of tanker lorry bearing No.AP 07T 0889 by the first respondent?
- 2) Whether the petitioner is entitled for compensation? If so, to what amount and from which of the respondents?
- 3) To what relief?

During the course of trial, on behalf of the petitioner, P.Ws.1 and 2 were examined and Exs.A1 to A4 and Ex.X1 were marked. On behalf of the third respondent-Insurance company, R.W.1 was examined and Ex.B.1 was marked.

Basing on the oral and documentary evidence available on record, the Tribunal allowed the petition in part by awarding compensation of Rs.37,000/- with proportionate costs and interest at the rate of 7.5% per annum from the date of petition till the date of deposit, directing the respondent Nos.1 to 3 to deposit the amount jointly and severally. Not satisfied with the amount of compensation awarded, the claimant preferred the appeal.

Heard Sri N.Siva Reddy, learned counsel for the appellant-claimant and Sri P.Harinath Gupta, learned standing counsel for the third respondent-Insurance company.

The contention of learned counsel for the petitioner is that the Tribunal, without properly appreciating the testimony of P.W.2- Doctor, granted meager amount towards compensation. Per contra, learned standing counsel for the third respondent-Insurance company submitted that the compensation awarded by the Tribunal is just and reasonable.

The third respondent-Insurance company has not filed appeal

challenging the manner of accident or the quantum of compensation awarded. Taking into consideration the oral testimony of P.W.1 and recitals of Exs.A1 and A3 certified copies of F.I.R. and the charge sheet respectively, the Tribunal arrived at a conclusion that the accident occurred due to rash and negligent driving of tanker lorry bearing No.AP 07T 0889 by the first respondent-driver. I am fully agreeing with the finding recorded by the Tribunal so far as the manner of the accident is concerned.

The oral testimony of P.Ws.1 and 2 coupled with Ex.A2 certified copy of wound certificate and Ex.X1 case sheet reveals that the petitioner sustained three simple injuries and one grievous injury. As per the testimony of P.W.2-Doctor, the petitioner sustained type-II compound fracture to the right leg. The Tribunal, after considering the material available on record, has granted an amount of Rs.31,000/- towards pain and suffering, Rs.5,000/- towards extra nourishment and Rs.1,000/- towards medical expenses.

The crucial question that falls for consideration is whether the petitioner incurred permanent disability or not. There is no whisper in the testimony of P.W.1 that he incurred permanent disability due to the injuries sustained by him in the accident. As per the testimony of P.W.2-Doctor, because of the injury sustained to the right leg, the petitioner suffered little limping. If really the petitioner incurred disability, what prevented him to appear before the Medical Board and obtain disability certificate. There is no whisper in the testimony of P.W.2 with regard to percentage of permanent or partial disability incurred by the petitioner. In the absence of documentary evidence, it is not safe to place reliance on the oral testimony of P.W.2 on this aspect. The material available on record falls short to establish that the petitioner incurred permanent or partial disability. In such circumstances, it is not permissible for the court to award any amount under the head 'loss of future income'.

The oral testimony of P.Ws.1 and 2 coupled with Ex.A2- wound certificate and Ex.X1-case sheet clearly reveals that the petitioner took treatment as inpatient for 13 days. As per the oral testimony of P.W.2, the petitioner was advised to take bed rest for a period of three months. As on the date of the accident, the petitioner was aged about 60 years. The court has to take into consideration the ground realities while appreciating the oral testimony of witnesses. The possibility of taking bed rest for a period of three months by the petitioner cannot be ruled out completely. During that period, the petitioner might not have attended to any work and thereby he lost income. Even by attending coolie work, the petitioner may earn Rs.4,000/- per month. Hence, I am inclined to award an amount of Rs.12,000/- (4,000 X 3) towards loss of earnings. Besides that due to the grievous injury sustained to the right leg, at the age of 60 years, the petitioner has to suffer in future also. Hence, I am inclined to award an amount of Rs.5,000/- towards loss of future amenities. Thus the total compensation awarded to the petitioner is as follows:

1)	Pain and suffering	:	Rs.31,000
2)	Extra nourishment etc.	:	Rs. 5,000
3)	Medical expenses	:	Rs. 1,000
4)	Loss of earnings	:	Rs.12,000
5)	Loss of future amenities	:	Rs. 5,000
Total compensation			Rs.54,000

In view of the above, I am of the considered view that the petitioner is entitled to Rs.54,000/- towards compensation. It is not in dispute that at the time of accident, the tanker lorry was insured with the third respondent. Therefore, the third respondent has to indemnify the liability of the second respondent-owner of the tanker lorry, who is vicariously liable for the wrongful act committed by the first respondent-driver.

In the result, the appeal is allowed in part, enhancing the

quantum of compensation from Rs.37,000/- to Rs.54,000/- (Rupees fifty four thousand only) with proportionate costs and interest at 7.5% per annum through out. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

T.SUNIL CHOWDARY, J

Date: 20-1-2015
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