

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A. No.647 of 2009

ORDER:

This appeal is filed under Section 173 of the Motor Vehicles Act (the Act) by the second respondent—insurance company challenging the judgment and award dated 27.9.2006 passed in M.V.O.P. No.1411 of 2005 on the file of the Motor Vehicles Accidents Claims Tribunal-cum-VI Additional District Court, (III Fast Track Court), Warangal at Mahabubabad.

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

3. The facts of the case leading to filing of the present appeal are, briefly, as follows: On 18.5.2005, at about 7.00 A.M., the petitioner was proceeding on his Suzuki motor cycle bearing No.AP 36G 8042 to Ayyappa Swamy Temple situated in the outskirts of Narsampet. When he reached near Venkateswara Petrol Bunk, the driver of the auto bearing No.AP 36V 7498 had driven the same in a rash and negligent manner and hit the motor cycle of the petitioner. The accident occurred due to rash and negligent driving of driver of the auto against whom the Station House Officer, Narsampet Police Station registered a case in Crime No.113 of 2005 under Section 338 IPC. In the accident, the petitioner sustained fractures to left knee and left wrist; and simple injuries on various parts of the body. The petitioner took treatment as inpatient in Dr.Ravi Kiran Hospital, Narsampet and also Veena Medicare Hospital, Hanamkonda. By the time of the accident, the petitioner was aged about 40 years and used to earn Rs.11,000/- per month by running book shop in the name of Mayuri Books and General Stores at Narsampet. Due to the fractures and injuries sustained in the accident, the petitioner could not run the business and thereby lost income. The first respondent is the driver of the auto. The second respondent is the owner of the auto, which was insured with the third respondent as on the date of the accident. Therefore, the respondent Nos.1 to 3 are joint and severally liable to pay compensation of Rs.3,00,000/- to the petitioner with proportionate costs and interest.

4. The respondent Nos.1 and 2 filed the counter denying the averments made in the petition, *inter alia*, contending that the accident occurred due to rash and negligent driving of the motor cycle by the petitioner. The vehicle of the second respondent

was insured with the third respondent as on the date of the accident and therefore, the third respondent alone is liable to pay compensation, if any, to the petitioner. The amount of compensation awarded by the Tribunal, under various heads, is highly excessive and exorbitant. Hence, the petition may be dismissed so far as these respondents are concerned.

5. The second respondent filed counter denying the averments made in the petition, *inter alia*, contending that the accident occurred due to the negligent driving of the motor cycle by the petitioner and there was no negligence on the part of the driver of the auto. The petitioner is not entitled to claim compensation unless he establishes that the driver of the auto was having valid and effective driving licence as on the date of the accident. The petitioner sustained only simple injuries. The amount of compensation claimed by the petitioner, under various heads, is highly excessive and exorbitant. Hence, the petition may be dismissed so far as this respondent is concerned.

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

- (1) Whether the accident took place on account of the rash and negligent driving of the crime auto bearing No.AP 36V 7498?
- (2) Whether the petitioner is entitled to any 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 to 3 were examined and Exs.A1 to A18 were marked. On behalf of the respondents, no oral or documentary evidence was adduced.

8. On appraising the oral and documentary evidence 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 auto, which resulted in injuries to the petitioner, and allowed the petition in part by awarding compensation of Rs.2,00,000/- directing the respondent Nos.1 to 3 to pay the same with interest at 7.5% per annum from the date of petition till the date of deposit. Feeling aggrieved by the judgment and award passed by the Tribunal, the second respondent preferred the present appeal.

9. Heard Smt.A.Jayanthi, learned counsel for the appellant – insurance company and Sri G.Anandam, learned counsel for the claimant. The name of Sri Katta Laxmi Prasad is inadvertently printed in the cause list.

10. The contention of the learned counsel for the appellant is two fold:- (1) the Tribunal has not rightly considered the evidence of P.Ws.2 and 3 and Ex.A17 disability certificate and awarded an amount of Rs.99,840/- towards loss of future earnings; and (2) the amount of compensation awarded under various heads is highly excessive and exorbitant. ***Per contra***, learned counsel for the claimant submitted that the Tribunal has awarded just and reasonable compensation and therefore, the appeal is liable to be dismissed.

11. Basing on the rival contentions, the point that arises for determination in this appeal is:

Whether the Tribunal has awarded just and reasonable compensation?

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 auto. The respondents have not adduced any evidence to demolish the case of the petitioner on this aspect. 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, this court is of the considered view that the accident occurred due to rash and negligent driving of the driver of the auto, which resulted in injuries to the petitioner.

13. The oral testimony of P.Ws.1 to 3 coupled with Exs.A3 and A18 reveals that the petitioner sustained fractures to left knee and left wrist. The petitioner also sustained simple injuries on left knee, left leg and face. Taking into consideration the nature of the fractures, the Tribunal awarded an amount of Rs.25,000/- towards pain and suffering. The Tribunal also awarded Rs.10,000/- towards pain and suffering in respect of simple injuries. Admittedly, the petitioner took treatment as inpatient in Veena Medicare, Hanamkonda. The oral testimony of P.Ws.2 and 3 (Doctors) coupled with Ex.A18 reveals that the petitioner underwent operation. Taking into consideration the oral and documentary evidence available on record, the Tribunal rightly awarded an amount of Rs.30,000/- towards medicines and extra nourishment. As per the testimony of P.W.2, the petitioner has to undergo another operation for removal of nail fixation. Taking into consideration this aspect, the Tribunal rightly awarded Rs.10,000/- towards future medical expenses. Due to the fractures, the petitioner might not have attended to his work at least for a period of three months. The Tribunal awarded an amount of Rs.7,800/- towards loss of earnings during the

period of treatment. Admittedly, the petitioner is not a resident of Hanamkonda. The family members of the petitioner might have visited Hospital at Hanamkonda to look after the welfare of the petitioner. Taking all these circumstances into consideration, the Tribunal has rightly awarded Rs.2,000/- towards transportation charges.

14. The oral testimony of P.W.2 coupled with Ex.A17 reveals that the petitioner incurred 30% disability. As per the testimony of P.W.2, the petitioner incurred disability due to stiffness to left knee. The disability incurred by the petitioner certainly affects the earning capacity of the petitioner to certain extent. The Tribunal, by taking into consideration the recitals of Ex.A17, rightly awarded Rs.99,840/- towards loss of earnings and future amenities.

15. A perusal of the record reveals that the Tribunal awarded an amount of Rs.15,000/- towards pain and suffering. It appears that the Tribunal might have awarded this amount by inadvertence. When the Tribunal awarded an amount of Rs.25,000/- and Rs.10,000/- towards pain and suffering for the fractures and simple injuries respectively, the question of awarding another amount of Rs.15,000/- towards pain and suffering does not arise. This court is of the considered view that the Tribunal has inadvertently awarded the said amount of Rs.15,000/- towards pain and suffering, which is not permissible under law. Hence, the said finding of the Tribunal is not sustainable. The amount of Rs.15,000/- is liable to be deducted from the total compensation of Rs.2,00,000/-. Thus, the petitioner is entitled to a compensation of Rs.1,85,000/-, which is just and reasonable. Accordingly, the point is answered.

16. In the result, the appeal is allowed in part, by reducing the compensation from Rs.2,00,000/- to Rs.1,85,000/-. The respondent Nos.1 to 3 are jointly and severally directed to pay the same with proportionate costs through out and interest at 7.5% per annum from the date of petition till the date of realization, which shall be deposited within a period of two months from the date of receipt of a copy of this judgment. Consequently, the miscellaneous petitions if any pending in this appeal shall stand closed.

T.SUNIL CHOWDARY, J

April 21, 2015.

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