

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A.No.782 of 2009

JUDGMENT:

1 Dissatisfied with the judgment and award dated 15.12.2006 passed in M.V.O.P.No.764 of 2005 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-V Additional District & Sessions Judge, Karimnagar wherein and whereby an amount of Rs.1,48,000/- was awarded as compensation as against the claim of Rs.5.00 lakhs, the claimant filed the present appeal.

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 15.07.2005, the petitioner was proceeding towards Gopikrishna function hall on his Suzuki motorcycle bearing No.AP-31-J-7073 in Karimnagar town and when he reached old age handicapped rest home, a tractor and trailer bearing No.AP-15-U-2316/2317 (hereinafter referred to as 'the crime vehicle') came in a rash and negligent manner driven by its driver and hit the motorcycle of the petitioner due to which the petitioner sustained fracture to his left leg and also received injuries on other parts of the body. The accident occurred due to the rash and negligent driving of the driver of the crime vehicle. In connection with the said accident, the Station House Officer, Karimnagar Traffic Police Station registered a case in Cr.No.95 of 2005 against the first respondent for the offences punishable under Sections 337 and 338 of IPC. The petitioner took treatment as inpatient in the hospital of Dr. Laxman's Institute of Orthopaedics, Karimnagar and spent huge amount towards medicines and treatment. By the date of accident, the petitioner was earning Rs.15,000/- per month on agriculture and by doing other works. Due to the injuries, the petitioner could not attend his work for a long time and thereby lost his income. Therefore, the petitioner filed the petition claiming compensation of Rs.5.00 lacks from the respondents. By the date of accident, the crime vehicle was insured with the third respondent and hence the respondent Nos.1 to 3 are jointly and severally liable to pay compensation to the petitioner.

5 Respondent Nos.1 and 2 have filed counter denying the material averments

inter *alia* contending that the accident occurred due to the rash and negligent driving of the motorcycle by the petitioner. It is further submitted that by the date of accident, the crime vehicle was insured with the third respondent and hence the third respondent alone is liable to pay compensation, if any, to the petitioner.

6 The third respondent filed counter denying the material averments made in the petition inter *alia* contending that the amount of compensation claimed by the petitioner under various heads is excessive and exorbitant. Hence the petition may be dismissed.

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

- i. Whether the accident took place due to the rash and negligent driving of the vehicle i.e. Tractor-trailer bearing No.AP-15-U-2316/2317 by its driver?
- ii. Whether the petitioner is entitled for compensation and if so, to what amount and from whom?
- iii. To what relief?

8 During the course of trial, on behalf of the petitioner P.Ws.1 and 2 were examined and Exs.A.1 to A.15 were marked. On behalf of the third respondent no oral evidence was let in, but Ex.B.1 was marked.

9 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 tractor and trailer bearing No.AP-15-U-2316/2317 i.e. first respondent and allowed the petition in part by awarding compensation of Rs.1,48,000/- with interest at 6% p.a from the date of filing of the petition till the date of realisation and directed the respondent Nos.1 to 3 to deposit the amount of compensation jointly and severally. Dissatisfied with awarding of said compensation, the petitioner filed the present appeal.

10 The learned counsel for the petitioner Sri S.Satyam Reddy submitted that the Tribunal has not rightly considered the oral and documentary evidence available on record and awarded meagre amount of compensation. He further submitted that petitioner sustained disability and the same was not considered by the Tribunal.

11 *Per contra*, Sri Srinivasa Rao Vutla, the learned counsel for the third respondent submitted that the Tribunal has rightly considered the oral and documentary evidence available on record and awarded just and reasonable compensation to the petitioner and hence there are no valid grounds to interfere with the said finding of the Tribunal in this appeal.

12 Now the point that falls for consideration in this appeal is:

“Whether the Tribunal has awarded just and reasonable compensation or not?”

Point:

13 As per the finding of the Tribunal on issue No.1, the accident occurred due to the rash and negligent driving of the driver of the tractor and trailer bearing No.AP-15-U-2316/2317 which resulted injuries to the petitioner and there was no negligence on the part of the petitioner. The third respondent 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. 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 tractor and trailer bearing No.AP-15-U-2316/2317 which resulted injuries to the petitioner.

14 Except the self serving testimony of P.W.1, there is no other convincing evidence to establish that he was earning Rs.3,000/- p.m. Taking into consideration the material available on record, the Tribunal arrived at a conclusion that the petitioner may earn Rs.2,000/- p.m. The petitioner took treatment as inpatient for a period of 15 days in the hospital of Dr. Laxman's Institute of Orthopaedics, Karimnagar. Even after his discharge from the hospital, it may not be possible for the petitioner to attend the work. Therefore, the Tribunal arrived at a conclusion that the petitioner might have been out of work for a period of six months and calculated the loss of earnings at Rs.12,000/- The Tribunal also awarded an amount of Rs.3,000/- towards transportation charges and Rs.3,000/- towards extra nourishment. The petitioner filed Ex.A.11 to A.14 medical bills to establish that he spent an amount of Rs.1,35,469/-. But the Tribunal awarded only Rs.1,20,000/- since the petitioner claimed that much of amount only. The amount of compensation awarded by the Tribunal under the above heads is just and reasonable to meet

the ends of justice. The Tribunal also awarded an amount of Rs.10,000/- towards pain and suffering. The oral testimony of P.Ws.1 and 2 reveals that the petitioner sustained fractures and underwent operation. Due to the fracture, the petitioner might have suffered a lot. Taking into consideration the nature of fracture sustained by the petitioner as well as the duration of treatment taken by him, I am inclined to award an amount of Rs.20,000/- towards pain and suffering instead of Rs.10,000/- as awarded by the Tribunal.

15 As per the oral testimony of P.W.1, the petitioner sustained 25% disability. The petitioner took treatment in the hospital of P.W.2. In such circumstances, the possibility of boosting up of the percentage of the disability cannot be ruled out completely. If really the petitioner sustained disability as stated by him, what prevented him from approaching the competent medical board and obtain the disability certificate. In the absence of any disability certificate issued by a competent medical board, it is not safe to place reliance on the self serving testimony of P.W.1.

16 As per the evidence of P.W.2, there is restriction of movement to the leg of the petitioner. A perusal of the record reveals that the petitioner underwent skin grafting. One may get stiffness if he undergoes skin grafting to the lg. Due to the restriction of movement of the leg, the petitioner may not enjoy the life like others. Therefore, I am inclined to award an amount of Rs.20,000/- towards loss of future amenities.

17 Thus, the compensation under different heads, which the petitioner is entitled to, would come as under:

- Pain and suffering: Rs. 20,000/-
- Transportation charges: Rs. 3,000/-
- Extra nourishment: Rs. 3,000/-
- Loss of earnings: Rs. 12,000/-
- Loss of future amenities: Rs. 20,000/-
- Purchase of medicines: Rs. 1,20,000/-

TOTAL Rs.1,78,000/-

18 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 6% p.a. on the enhanced amount of compensation from the date of filing of the petition till the date of realisation. The tractor and trailer bearing No.AP-15-U-2316/2317 which belongs to the second respondent was validly insured with the third respondent, by the date of accident. Therefore, the respondent Nos.1 to 3 are jointly and severally liable to pay compensation to the petitioner.

19 In the result, the appeal is allowed in part, the amount compensation awarded by the Tribunal is enhanced from Rs.1,48,000/- to Rs.1,78,000/- with interest at 6% 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 to 3 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 6% p.a. from the date of filing of the petition till the date of realisation. As a sequel, miscellaneous petitions, pending in this miscellaneous appeal, if any, shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 4th March, 2015.

kvsn