

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.244 OF 2009

JUDGMENT:

1 This appeal is filed under Section 173 of M.V. Act, assailing the judgment and award dated 06.06.2008 passed in M.V.O.P.No.80 of 2004 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-V Additional District Judge, Ongole.

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 28.08.2003 the petitioner and his brother were proceeding to Ongole from Nellore on a scooter. When they reached near Bhimavaram cross roads, the driver of the lorry bearing No.PU 01 P 2369 drove the same in a rash and negligent manner and hit the scooter of the petitioner. The accident occurred due to the rash and negligent driving of the driver of the lorry, against whom the Station House Officer, Ulavapadu police station registered a case in Cr.No.36 of 2003 under section 337 IPC. Due to the accident, the petitioner sustained fractures to both legs and other parts of the body and took treatment as inpatient in Narayana Medical College & General Hospital, Nellore from 02.09.2003 to 20.09.2003 and spent Rs.40,000/-. In total, the petitioner spent an amount of Rs.1.00 lakh for medicines and treatment. The petitioner underwent operation to his right tibia. By the date of accident, the petitioner was aged about 55 years. The lorry bearing No.PU 01 P 2369, which belongs to the first respondent, was insured with the second respondent as on the date of accident. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioner. Hence the petitioner filed the claim petition seeking compensation of Rs.5.00 lakhs from the respondents.

5 First respondent remained *ex parte*. Second respondent filed counter denying the material averments made in the petition *inter alia* contending that the accident occurred due to the rash and negligent driving of the rider of the scooter and that there was no negligence on the part of the driver of the lorry bearing No.PU 01 P 2369. It is further contended that the petitioner is not

entitled to claim compensation unless the petitioner establishes that the driver of the lorry was having valid and effective driving licence as on the date of accident. 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 for trial:

- i. Whether the petitioner sustained injuries in Motor Vehicle Accident made by lorry bearing No.PU 01/P-2369 by its driver due to rash and negligent driving?
- ii. Whether the petitioner is entitled to claim compensation? If so, to what amount and from whom?
- iii. To what relief?

7 During the course of trial, on behalf of the petitioner P.Ws.1 to 5 were examined and Exs.A.1 to A.93 were marked. On behalf of the respondents no oral evidence was let in, but copy of the insurance policy was marked as Ex.B.1.

8 Having appreciated the 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 lorry bearing No.PU 01 P 2369, which resulted injuries to the petitioner and allowed the petition in part by awarding compensation of Rs.1,05,000/- and directed the respondent Nos.1 and 2 to deposit the same jointly and severally with interest at 7.5% p.a. Being not satisfied with the said amount of compensation, the claimant filed the present appeal.

9 Heard Smt. Ch.Lakshmi Kumari, the learned counsel for the petitioner and Sri Srinivasarao Vutla, the learned standing counsel for the second respondent.

10 The contention of the learned counsel for the petitioner is three fold, viz., 1) The Tribunal failed to consider the various medical bills filed by the petitioner, 2) The Tribunal discarded Exs.A.92 and A.93 and determined the monthly income, which is contrary to settled principles of law, and 3) The amount of compensation awarded by the Tribunal under various heads is too meagre.

11 *Per contra*, the learned standing counsel for the second respondent submitted that the Tribunal has rightly considered the oral and documentary

evidence in right perspective and awarded just and reasonable compensation. He further submitted that there are no grounds much less valid grounds to interfere with the well considered judgment and award passed by the Tribunal.

12 Basing on the rival contentions, the point that falls for determination in this appeal is:

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

Point:

13 The finding of the Tribunal that the accident occurred due to the rash and negligent driving by the driver of the lorry bearing No.PU 01 P 2369 became final in view of non-filing of appeal or cross-objections by the respondent Nos.1 and 2. I am fully agreeing with the finding recorded by the Tribunal 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 lorry bearing No.PU 01 P 2369, which resulted injuries to the petitioner.

14 As per Ex.A.2 – wound certificate, the petitioner sustained lacerated wound on right portion of scalp and fracture to right tibia. As per Ex.A.5 – discharge summary, the petitioner took treatment as inpatient from 02.09.2003 to 20.09.2003 in Narayana hospital where interlocking was done to right shaft tibia. Due to fracture and injuries, the petitioner might have suffered a lot. Taking into consideration the nature of injuries sustained by the petitioner, the Tribunal awarded an amount of Rs.35,000/- towards pain and suffering.

15 The petitioner filed medical bills Exs.A.7 to A.91. The Tribunal considered the genuineness of these medical bills in para No.12 of the impugned judgment. The Tribunal made an observation that Exs.A.48 to A.50 pertain to the treatment taken by the petitioner in Sai Chandan hospital. The petitioner spent this amount towards heart treatment. Taking advantage of the accident, the petitioner might have filed these medical bills by taking treatment for his heart problem. The Tribunal scrutinised various bills filed by the petitioner and awarded an amount of Rs.49,000/- towards medicines.

16 It is a known fact that doctors advise patients to take special diet for uniting of the fractures. The Tribunal has not awarded any amount towards extra nourishment. Taking into consideration the nature of the fractures sustained by the petitioner, I am inclined to award Rs.5,000/- towards extra nourishment.

17 The petitioner belongs to Ongole town, whereas he took treatment in Nellore. The family members of the petitioner might have visited Nellore to look after the welfare of the petitioner. Hence I am inclined to award an amount of Rs.7,000/- towards transportation charges.

18 The petitioner filed Exs.A.92 and A.93 to prove his income. Basing on the material available on record, the Tribunal arrived at a conclusion that the petitioner may earn Rs.7,000/- p.m. after deducting expenses that may be incurred by him for running the commission agent office. Due to fracture, the petitioner might not have attended to his work at least for a period of four months, including the period of treatment. Hence I am inclined to award an amount of Rs.28,000/- instead of Rs.21,000/- as awarded by the Tribunal towards loss of earnings.

19 Thus, in all, the amount of compensation to which the petitioner is entitled, under various heads, is as follows:

Pain and suffering: Rs.35,000/-

Medicines and treatment: Rs.49,000/-

Extra nourishment: Rs.5,000/-

Loss of earnings: Rs.28,000/-

Transportation charges: Rs.7,000/-

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Total: Rs.1,24,000/-

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20 The compensation awarded under the above heads is just and reasonable to meet the ends of justice.

21 The lorry bearing No.PU 01 P 2369, which belongs to the first respondent, was insured with the second respondent as on the date of accident. Absolutely there is no material on record to show that the first respondent had violated the

terms and conditions of Ex.B.1 insurance policy. Hence the respondent Nos.1 and 2 are jointly severally liable to pay compensation of Rs.1,24,000/- to the petitioner together with interest at 7.5% p.a.

21 In the result, the appeal is allowed in part, the amount compensation awarded by the Tribunal is enhanced from Rs.1,05,000/- to Rs.1,24,000/- with interest at 7.5% p.a. throughout. The respondent Nos.1 and 2 are directed to deposit the compensation amount jointly and severally. No order as to costs. As a sequel, miscellaneous petitions pending in this appeal, if any, shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 20th April, 2015.

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