

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A. No.336 of 2009

ORDER:

This appeal is filed under Section 173 of the Motor Vehicles Act (the Act) by the claimant challenging the judgment and award dated 15.9.2008 passed in O.P. No.848 of 2006 on the file of the Motor Vehicles Accidents Claims Tribunal-cum-XIV Additional Chief Judge, City Civil Court (Fast Track Court), Hyderabad.

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 31.1.2006, the petitioner along with his brother was proceeding to Dabeerpura from Abids on his motor cycle bearing No.AP 37E 3. When they reached near Sivaji bridge, Afzalgunj, the driver of the car bearing No.AP 9AT 4562 had driven the same in a rash and negligent manner and hit the motor cycle from its opposite direction. The accident occurred due to rash and negligent driving of driver of the car against whom the Station House Officer, Afzalgunj Police Station registered a case in Crime No.97 of 2006 under Section 337 IPC. In the accident, the petitioner sustained fracture to both bones of right leg and a lacerated injury on the skull. The petitioner took treatment as inpatient in Bhagwan Das Hospital, Hyderabad and underwent surgery. At the time of the accident, the petitioner was aged about 19 years and used to earn Rs.3,000/- per month as sales executive. Due to the injuries, the petitioner could not attend to his work for a long time and thereby lost income. The first respondent is the owner of the car bearing No.AP 9AT 4562, which was insured with the second respondent—insurance company with effect from 23.1.2006 to 22.1.2007. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.1,50,000/- to the petitioner.

4. The first respondent remained *ex parte*.

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 car. The amount of compensation claimed by the petitioner, under various

heads, is highly excessive and exorbitant. This respondent is not liable to pay compensation to the petitioner, if any, unless he establishes that the driver of the car was having valid and effective driving licence as on the date of the accident. Hence, the petition may be dismissed.

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

(1) Whether the accident resulting in injuries to the petitioner occurred owing to the rash and negligent driving of the driver of the car bearing No.AP 9AT 4562?

(2) Whether the petitioner is entitled for 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 A14 were marked. On behalf of the second respondent, no oral evidence was let in, but Exs.B1 and X1 were marked.

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 car bearing No.AP 9AT 4562, which resulted in injuries to the petitioner, and allowed the petition in part by awarding compensation of Rs.44,000/- directing the respondent Nos.1 and 2 to pay the same with interest at 7% per annum from the date of petition till the date of deposit. Being not satisfied with the quantum of compensation awarded by the Tribunal, the petitioner preferred the present appeal.

9. The respondent Nos.1 and 2 herein having received the notice did not choose to appear before this court.

10. The contention of Sri U.P. Rao, learned counsel for the appellant is two fold:- (1) the Tribunal committed error while discarding the oral testimony of P.W.2 and Ex.A13 disability certificate; and (2) the amount of compensation awarded under various heads is too meager.

11. Now, 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 car. The finding recorded by the Tribunal, on issue No.1, became final in view of non-filing of appeal or cross-objections by the respondents. 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 car, which resulted in injuries to the petitioner.

13. The oral testimony of P.W.2 coupled with Exs.A4 and A5 reveals that the petitioner sustained fracture to both bones of right leg and lacerated injury on the skull. A perusal of Exs.A3 to A5 clearly reveals that the petitioner took treatment as inpatient in Bhagwan Das Hospital, Hyderabad from 01.2.2006 to 05.2.2006. Due to the fracture and injury, the petitioner might have suffered a lot. Taking into consideration the nature of the fracture injury sustained by the petitioner, this court is inclined to award an amount of Rs.18,000/- instead of Rs.2,000/- as awarded by the Tribunal. The Tribunal, after scrutinizing the medical bills filed by the petitioner, rightly awarded an amount of Rs.30,000/- towards medicines and treatment. Due to the fracture, the petitioner might not have attended to his work at least for a period of three months including the period of treatment. Even by attending any work, the petitioner may earn Rs.3,000/- per month and hence, this court is inclined to award an amount of Rs.9,000/- towards loss of earnings. It is a known fact that the Doctors may advise the patients to take special diet for uniting of fracture. Taking into consideration the nature of fracture sustained by the petitioner, this court is inclined to award Rs.3,500/- towards extra nourishment and incidental expenses.

14. The petitioner appeared before the Medical Board and obtained disability certificate (Ex.A13). P.W.2 (Doctor) is one of the members of the Medical Board. As per the testimony of P.W.2, the petitioner incurred 10% disability. There is no whisper in the testimony of P.W.2 that the disability incurred by the petitioner would affect the earning capacity of the petitioner. A functional disability cannot be equated with the loss of earning capacity. Due to the disability, the petitioner may not enjoy his life like a normal person. Taking into consideration the nature of the disability incurred by the petitioner, this court is inclined to award an amount of Rs.20,000/- towards loss of future amenities instead of Rs.5,000/- as awarded by the Tribunal. The amount of compensation awarded to the petitioner, under various heads, is as follows:

Rs.

1. Pain and suffering : 18,000
2. Loss of earning during the period
of treatment : 9,000
3. Medicines and treatment : 30,000
4. Loss of future amenities : 20,000
5. Extra nourishment and incidental
expenses : 3,500

Total : 80,500

The compensation of Rs.80,500/- awarded to the petitioner is fair, just and reasonable.

15. The recitals of Ex.B1 clearly reveals that the crime vehicle was insured with the second respondent – insurance company as on the date of the accident. Absolutely, there is no material on record that the first respondent has violated terms and conditions of the policy so as to absolve the liability of the second respondent. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioner. Accordingly, the point is answered.

16. In the result, the appeal is allowed in part, enhancing the compensation from 44,000/- to Rs.80,500/-. The respondent Nos.1 and 2 are jointly and severally directed to pay the same with proportionate costs through out and interest at 7% 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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