

**HON'BLE SRI JUSTICE T.SUNIL CHOWDARY**

M.A.C.M.A. No.877 OF 2009

JUDGMENT:

This appeal is filed by the claimant challenging the judgment and award dated 30.12.2008 passed in O.P. No.738 of 2005 on the file of the Motor Accidents Claims Tribunal-cum-I Additional District Judge, Nizamabad.

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

3. The facts leading to filing of the present petition are briefly as follows: On 07.10.2004 at about 12.00 Noon, the petitioner boarded Auto bearing No.AP 25U 3069 at Varni to go to Bodhan. When the auto reached Akbar Nagar, the driver of the auto, while overtaking another auto in a rash and negligent manner, hit scooter bearing No.AP 25D 1748. The Station House Officer, Varni Police Station registered a case in Crime No.153 of 2004 for the offence under Section 337 IPC against the driver of the auto bearing No.AP 25U 3069. The petitioner sustained fracture to right leg, chest bones and injuries on other parts of the body. He took treatment as inpatient in Government Hospital, Bodhan and also in a private hospital. By the time of the accident, the petitioner was aged about 40 years and used to earn Rs.10,000/- per month as agricultural labour. Due to the injuries sustained, the petitioner could not attend work for a long time thereby lost his income. The auto bearing No.AP 25U 3069, which belongs to the first respondent, was insured with second respondent as on the date of the accident. Therefore the respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioner. The petitioner filed the petition claiming compensation of Rs.2,00,000/- with interest and costs.

4. The first respondent remained ex parte. The second respondent filed counter denying all the material averments made in the petition including the manner of the accident and the nature of the injuries sustained by the petitioner, *inter alia*, contending that the first respondent did not inform the factum of accident to the second respondent in collusion with the petitioner. The first respondent has violated the terms and conditions of the insurance policy. Therefore, the second respondent is not liable to pay compensation to the petitioner. The amount of compensation claimed by the petitioner under various heads is highly excessive and exorbitant. Hence the petition may be dismissed.

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

- 1) Whether the accident occurred on 7.10.2004 at about 12.00 noon due to rash and negligent driving of Auto bearing No.AP 25U 3069 by its driver?
- 2) Whether the petitioner is entitled to compensation. If so, to what amount and from whom?
- 3) To what relief?

6. During the course of trial, on behalf of the petitioner, P.Ws.1 and 2 were examined and Exs.A1 to A13 were marked. On behalf of the second respondent, no oral or documentary evidence was adduced.

7. On appraising the oral and documentary evidence available on record, the Tribunal arrived at a conclusion that the accident was occurred due to the rash and negligent driving of the driver of the auto bearing No.AP25U 3069 and allowed the petition in part by awarding compensation of Rs.26,000/- with proportionate costs and interest at the rate of 7.5% per annum from the date of petition till the date of realisation, directing the respondent Nos.1 and 2 jointly and severally to deposit the amount within one month from the date of the award.

Being not satisfied with the amount of compensation awarded, the claimant preferred the appeal.

8. The respondent Nos.1 and 2 having received the notice in this appeal remained ex parte. Hence, this court is inclined to pass order on merits in their absence.

9. Sri M.Rajamalla Reddy, learned counsel for the appellant-claimant submitted that the tribunal has not awarded just and reasonable compensation to the petitioner.

10. Now, the point that arises for consideration in this appeal is:

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

**Point:**

11. The Tribunal, on appraising the oral, documentary evidence and other material available on record, arrived at a conclusion on issue No.1 that the accident occurred due to rash and negligent driving of the driver of the auto, which resulted in injuries to the petitioner. The respondents have not filed any appeal or cross-objections challenging the finding of the Tribunal on issue No.1. Hence, the finding recorded by the Tribunal on issue No.1 became final.

12. As per the oral testimony of P.W.1, due to the accident, he sustained fracture to right leg and injuries on other parts of the body. He took treatment as inpatient in Government Hospital, Bodhan from 07.10.2004 to 29.10.2004. As per the oral testimony of P.W.2-Doctor, the petitioner sustained compound fracture to left (*sic*, right) leg and blunt injury on the chest. The oral testimony of P.Ws.1 and 2 is supported by the recitals of Ex.A3-injury certificate so far as the nature of the injuries are concerned. Due to the fracture and blunt injury, the petitioner might have suffered a lot and therefore, I am inclined to

award an amount of Rs.25,000/- towards pain and suffering instead of Rs.22,000/- as awarded by the Tribunal.

13. As per the oral testimony of P.W.1, he took treatment in Vaishnavi Hospital, Nizamabad. Except the self-served testimony of P.W.1, there is no other convincing evidence to prove that the petitioner took treatment in Vaishnavi Hospital, Nizamabad. If really the petitioner had taken treatment in the said hospital, what prevented him to produce the case sheet or other relevant documents. In the absence of documentary evidence, it is not safe to place reliance on the oral testimony of P.W.1, who is an interested witness. Hence, I am unable to accede to the contention of learned counsel for the petitioner that the petitioner took treatment in Vaishnavi Hospital, Nizamabad. The petitioner filed Ex.A5 prescriptions and Ex.A6 medical bills. As per Ex.A6 medical bills, the petitioner purchased medicines as per Ex.A5 prescriptions given by the Doctor in Vaishnavi Hospital, Nizamabad. When the petitioner failed to prove that he has taken treatment in Vaishnavi Hospital, Nizamabad, the question of granting of some amount towards purchase of medicines basing on the bills of that hospital does not arise. The possibility of producing this type of medical bills to claim more compensation cannot be ruled out completely. The very purpose of the Motor Vehicles Act is to provide fair, just and reasonable compensation to the claimants. That does not mean, the Tribunal or court has to award the compensation without scrutinizing the bills produced by the claimants. The Tribunal, after due consideration, has rightly disbelieved Exs.A5 and A6. There are no grounds much less valid grounds to interfere with the finding recorded by the Tribunal on this aspect.

14. A perusal of the record reveals that the petitioner took treatment as inpatient in Government Hospital, Nizamabad for a period of 22 days. It is needless to say that the persons, who took treatment in a

Government Hospital, have to purchase the medicines from outside. The petitioner sustained compound fracture to right leg and injury to chest. In such circumstances, the petitioner might have spent some amount for taking X-rays and other diagnostic charges. Taking into consideration the nature of the fracture and other injuries sustained by the petitioner, I am inclined award an amount of Rs.5,000/- towards medicines and extra nourishment. When the petitioner was in the hospital, his family members have to visit the hospital. Hence, I am inclined to award Rs.1,500/- towards transportation charges. Due to fracture to right leg, the petitioner must have abstained to his regular work for a period of three months including treatment period. Except the self-served testimony of P.W.1, there is no other convincing evidence to prove that he used to Rs.10,000/- per month as on the date of the accident. In the absence of convincing evidence, some guess work is inevitable. Having regard to the age and other attending circumstances, the income of the petitioner can be taken at Rs.3,000/- per month. Hence, I am inclined to award Rs.9,000/- towards loss of earnings. Thus, in all, the petitioner is entitled to the compensation under the following heads:

|         |                                                |                 |
|---------|------------------------------------------------|-----------------|
| 1)      | Pain and suffering :                           | Rs.25,000       |
| 2)      | Medicines, treatment<br>and extra nourishment: | Rs. 5,000       |
| 3)      | Transportation charges:                        | Rs. 1,500       |
| 4)      | Loss of earnings :                             | Rs. 9,000       |
| Total : |                                                | <hr/> Rs.40,500 |

14. Having regard to the facts and circumstances of the case, I am of the considered view that the petitioner is entitled to Rs.40,500/- towards compensation. The point is answered accordingly.

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

quantum of compensation from Rs.26,000/- to Rs.40,500/- (Rupees forty thousand five hundred only) with proportionate costs and interest at 7.5% per annum through out. The respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioner with proportionate costs and interest at 7.5% per annum from the date of petition till realization. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

---

**T.SUNIL CHOWDARY, J**

Date: 19.02.2015  
YS