

HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A. No.908 OF 2009

JUDGMENT:

This appeal is filed by the claimant challenging the judgment and award dated 31.12.2008 passed in M.V.O.P. No.67 of 2007 on the file of the Motor Accidents Claims Tribunal-cum-VI Additional District Judge (Fast Track Court), Tirupati.

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

3. The facts leading to filing of the present appeal, in brief, are as follows: On 11.12.2005 the petitioner engaged auto bearing No.AP 03V 6927 to attend the marriage at Railway Kalyana Mandapam, Pakala along with his family members. After attending the marriage they were returning in the same auto and when they reached Panapakam on Chittoor–Tirupati main road at about 11.00 P.M., the driver of the auto had driven the same in a rash and negligent manner and dashed against a mile stone. The accident occurred due to the rash and negligent driving of the driver of the auto against whom the Station House Officer, Chandragiri Police Station registered a case in Crime No.8 of 2006 under Sections 337, 338 and 279 IPC. Due to the accident, the petitioner sustained fracture on frontal bone and injuries on other parts of the body and took treatment in Government Hospital, Tirupati. The petitioner spent huge amount towards medicines and treatment. The offending auto, which belongs to the first respondent, was insured with the second respondent and therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.1,50,000/- to the petitioner with interest and costs.

4. The first respondent remained *ex parte*. The second respondent–insurance company filed counter denying the material

averments made in the petition *inter alia* contending that the first respondent permitted the passengers in the auto more than the seating capacity and thereby the first respondent violated the terms and conditions of the policy. The amount of compensation claimed by the petitioner, under various heads, is highly excessive and exorbitant. Hence, the petition is liable to be dismissed so far as the second respondent is concerned.

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

- 1) Whether the petitioner sustained injuries in a motor vehicle accident that took place on 11.12.2005 at 11.00 P.M., near Panapakam on Chittoor – Tirupati road, due to rash and negligent driving of the driver of the auto bearing Reg. No.AP 03V 6927 belonging to 1st respondent, insured with 2nd respondent?
- 2) Whether the petitioner is entitled to compensation? If so, what amount and from whom?
- 3) To what relief?

6. During the course of the trial, on behalf of the petitioner, P.Ws.1 to 3 were examined and Exs.A1 to A10 were marked. On behalf of the second respondent, no oral evidence was adduced but Ex.B1 policy was marked.

7. On appraising the oral, documentary evidence and other 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 auto, which resulted in injuries to the petitioner, and allowed the petition in part by awarding compensation of Rs.41,000/-. Feeling aggrieved by the judgment and award, the claimant preferred the appeal.

8. Heard Sri P.Govind Reddy, learned counsel for the appellant – claimant and Sri N.S.Bhaskara Rao, learned standing counsel for the second respondent – insurance company.

10. The contention of learned counsel for the claimant is two fold: (1) the Tribunal discarded Ex.A10 disability certificate on erroneous grounds; and (2) the amount of compensation awarded by the Tribunal is too meager. **Per contra**, learned standing counsel for the insurance company submitted that the quantum of compensation awarded by the Tribunal is just and reasonable and there are no grounds to interfere with the same.

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

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

Point:

12. Basing on the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion on issue No.1 that the accident occurred due to rash and negligent driving of the driver of the auto. The finding recorded by the Tribunal became final in view of non-filing of appeal or cross-objections by the second respondent challenging the said finding. I am fully agreeing with the finding recorded by the Tribunal on issue No.1. Therefore, this court is of the considered view that the accident occurred due to the rash and negligent driving of the driver of the auto, which resulted in injuries to the petitioner.

13. The Tribunal awarded the compensation under the following heads:

		Rs.
1.	Transport to Hospital	: 1,000
2.	Extra nourishment, medical bills and attendant charges	: 10,000
3.	Pain and suffering, medical bills and loss of amenities	: 20,000
4.	Permanent disability and loss of earning power	: 10,000
	Total	: 41,000

The oral testimony of P.W.1 coupled with Ex.A3 wound certificate reveals that the petitioner sustained fracture on left frontal bone, one grievous injury on the left shoulder and five other simple injuries. Due to the fractures, the petitioner might have suffered a lot. Taking into consideration the nature of the injuries sustained by the petitioner, the Tribunal awarded an amount of Rs.20,000/- towards pain and suffering, which is just and reasonable to meet the ends of justice. The Tribunal also rightly awarded an amount of Rs.10,000/- towards medicines and extra nourishment. The Tribunal also rightly awarded an amount of Rs.1,000/- towards transport to hospital.

14. Due to the fracture to the left frontal bone and other injuries, the petitioner might not have attended to his work for a period of three months including the period of treatment. Hence, I am inclined to award an amount of Rs.9,000/- towards loss of earnings during the period of treatment. As per the testimony of P.W.3, the petitioner incurred 30% disability. In the cross-examination, P.W.3 in unequivocal terms deposed that discharge summary does not bear his signature. As per the testimony of P.W.3, the petitioner visited his clinic for follow-up treatment. A perusal of the testimony of P.W.3 reveals that he issued disability certificate without verifying X-ray or C.T. scan of the petitioner. P.W.3 is a neurologist. His testimony reveals that he conducted vision test to the petitioner by confrontation test and found that there is diminution of eye vision to the petitioner. This court is unable to understand how a neurologist conducts visionary test and certifies loss of vision, which has to be done by an ophthalmologist. It appears that the petitioner approached P.W.3 for obtaining disability certificate in order to get more compensation. The Tribunal has considered all these aspects and rightly restrained to place reliance on Ex.A10 disability certificate. However, simply because the petitioner produced this type of certificates, the court shall not discard the case of the petitioner in toto.

15. The fact remains that the petitioner sustained fracture to left frontal bone. Due to the fracture to a frontal bone, one may get giddiness and other related problems. Because of these problems, the petitioner may not enjoy his life as he enjoyed prior to the accident. Taking into consideration the nature of the fracture sustained by the petitioner, I am inclined to award an amount of Rs.20,000/- towards loss of future amenities instead of Rs.10,000/- as awarded by the Tribunal. Thus, in all, the petitioner is entitled to the compensation under the following heads:

		Rs.
1.	Pain and suffering	: 20,000
2.	Medicines and extra nourishment	: 10,000
3.	Transportation charges	: 1,000
4.	Loss of earnings during treatment period:	9,000
5.	Loss of future earnings	: 20,000
Total		: 60,000

The petitioner is entitled to a total compensation of Rs.60,000/-, which is fair, just and reasonable to meet the ends of justice. Accordingly, this point is answered.

16. In the result, the appeal is allowed in part enhancing the compensation from Rs.41,000/- to Rs.60,000/- (Rupees sixty thousand only). The respondent Nos.1 and 2 are jointly and severally liable to pay the same with proportionate costs throughout and interest at 7.5% per annum from the date of petition till realization, within a period of two months from the date of receipt of a copy of this order. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

T.SUNIL CHOWDARY, J

Date: 10.3.2015
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