

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.925 of 2009

JUDGMENT:

1 Dissatisfied with the amount of compensation awarded by judgment and award dated 26.11.2008 passed in M.V.O.P.No.711 of 2004 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District & Sessions Judge, Adilabad, wherein and whereby an amount of Rs.84,108/- was awarded as compensation, 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 21.09.2003 the petitioner was returning home on his Hero Honda Motorcycle after attending his duties and at about 7.30 PM when he reached SRP-I Kanta Srirampur, the driver of the Jeep bearing No.AP 15 T 9621 had driven the same in a rash and negligent manner and dashed against the motorcycle of the petitioner. In connection with the said accident, the Station House Officer, Srirampur police station registered a case in Cr.No.82 of 2003 under Section 337 IPC. Due to the accident, the petitioner sustained fracture to both bones of his right leg. The petitioner took treatment as inpatient in Singareni Collieries hospital and also at Hyderabad and spent huge amount towards medicines and treatment. By the date of accident, the petitioner was aged 50 years and used to earn Rs.8,000/- p.m. as an employee in Singareni Collieries. Due to the injuries, the petitioner sustained permanent disability. Hence the petitioner filed the petition claiming compensation of Rs.3,10,000/- from the respondents. The Jeep bearing No.AP 15 T 9621, which

belongs to the first petitioner, 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.

5 First respondent remained ex parte. Second respondent 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 and that there was no rash or negligent act on the part of the driver of the Jeep. The amount of compensation claimed by the petitioner under various heads is excessive and exorbitant as the petitioner sustained only simple injuries. It is the duty of the petitioner to prove that the driver of the Jeep was having valid driving licence as on the date of accident. Hence the petition may be dismissed.

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

- i. Whether the pleaded accident occurred resulting injuries to the petitioner and if so was it due to the fault of the driver of the first respondent's Jeep bearing No.AP 15 T 9621 or the fault of the petitioner and if both are responsible what is the responsibility of each of them?
- ii. Whether the first respondent's Jeep AP 15 T 9621 stood insured with the second respondent insurance company on the date of accident and if so whether it covers the risk of the petitioner?
- iii. Whether petitioner is in principle entitled to compensation and if so to what amount and what is the liability of respondents?
- iv. To what relief?

7 During the course of trial, on behalf of the petitioner P.Ws.1 to 3 were examined and Exs.A.1 to A.14 were marked. On behalf of the respondents no oral or documentary evidence was let in.

8 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 Jeep bearing No.AP 15 T 9621 and allowed the petition in part by awarding compensation of Rs.84,108/- with interest at 7.5% p.a from the date of filing of the petition till the date of realisation. Being dissatisfied with awarding of said amount of compensation, the petitioner filed the present appeal.

9 Sri S. Surender Reddy, the learned counsel for the petitioner submitted that the Tribunal has not considered the various medical bills filed by the petitioner. He further submitted that the amount of compensation awarded by the Tribunal under different heads is too meagre.

10 Though notices were served, the respondent Nos.1 and 2 did not choose to appear before this Court. Hence I am inclined to proceed with the matter on merits.

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

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

Point:

12 As per the finding of the tribunal, the accident occurred due to the rash and negligent driving of the driver of the Jeep bearing No.AP 15 T 9621. The finding of the Tribunal on issue No.1 has become final in view of the non-filing of any appeal or cross – objections by the first respondent. The Tribunal has assigned cogent and valid reasons to its finding on issue No.1 that the accident occurred due to the rash and negligent driving of the driver of the Jeep bearing No.AP 15 T 9621. 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 Jeep bearing No.AP 15 T 9621.

13 As per the oral testimony of P.Ws.1 and 2, the petitioner sustained fracture to both bones of right leg. Initially, the petitioner took treatment in Singareni Collieries hospital and left the hospital against the medical advice. As per Ex.A.3, the petitioner sustained fracture to both bones of his right leg. The fact remains that the petitioner is a chronic diabetic patient. Due to the fracture to both bones of his right leg, the petitioner might have suffered a lot. Hence I am inclined to award an amount of Rs.15,000/- towards pain and suffering instead of Rs.7,500/- as awarded by the Tribunal. I am also inclined to award an amount of Rs.3,000/- towards extra nourishment.

14 The petitioner being an employee in Singareni Collieries is entitled for medical reimbursement. There is no material on record to establish that the petitioner received amount from the Singareni Collieries. In such circumstances, I am of the considered view that the Tribunal has rightly awarded Rs.30,000/- towards medicines. The Tribunal has also rightly awarded Rs.3,000/- towards transportation charges and Rs.3,000/- towards attendant charges.

15 Due to the injuries sustained by him, the petitioner might not have attended to his work for a period of three months. Had the unfortunate accident not taken place, the petitioner would not have applied for any nature of leave. The Tribunal has rightly considered this aspect and has rightly awarded an amount of Rs.40,608/- towards loss of earnings during the period of treatment. Absolutely there is no material on record to establish that the petitioner sustained permanent disability due to the fracture sustained by him. Taking into consideration the nature of employment of the petitioner,

the Tribunal did not award any amount under the loss of future earnings.

16 Thus, the total compensation, which the petitioner is entitled to, would come as under:

<u>Pain and suffering:</u>	<u>Rs.15,000/-</u>
<u>Medicines:</u>	<u>Rs.30,000/-</u>
<u>Extra nourishment:</u>	<u>Rs. 3,000/-</u>
<u>Loss of earnings during the</u>	
<u>Period of treatment:</u>	<u>Rs.40,608/-</u>
<u>Attendant charges:</u>	<u>Rs. 3,000/-</u>
<u>Transportation charges:</u>	<u>Rs. 3,000/-</u>
	<u>=====</u>
<u>TOTAL</u>	<u>Rs.94,608/-</u>
	<u>=====</u>

17 The amount of compensation awarded under various heads is just and reasonable. The point is answered accordingly.

18 In the result, the appeal is partly allowed enhancing the compensation from Rs.84,108/- to Rs.94,608/- with interest at 7.5% p.a. throughout. The respondent Nos.1 and 2 are hereby directed to the deposit the amount of compensation together with interest as stated above, jointly and severally. On such deposit, the petitioner is entitled to withdraw the entire amount. Parties are directed to bear their own costs in this appeal. As a sequel, the miscellaneous petitions, pending in this appeal, if any, shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 11th March, 2015.

Kvsn