

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

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M.A.C.M.A.No.724 of 2009

JUDGMENT:

This appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') by the petitioner in O.P.No.1641 of 2003 on the file of the Chairman, Motor Accident Claims Tribunal (Fast Track Court), Nizamabad at Kamareddy (for short, 'the Tribunal'), dissatisfied with the judgment and award, dated 27.04.2006, whereby and whereunder a sum of Rs.48,000/- was granted as against Rs.2,00,000/-.

2. For the sake of convenience, the parties are hereinafter referred to as arrayed in the O.P. before the Tribunal.

3. The facts leading to filing of the appeal, in brief, are as follows:

The petitioner filed the petition claiming compensation of Rs.2,00,000/- for the injuries sustained by him in a motor vehicle accident that occurred on 29.04.2002. The case of the petitioner is that on 29.04.2002, the petitioner boarded the auto bearing No.AP.25.T.8693 at Nizamsagar to go to Yellareddy. When the auto reached near Ramalingam well, the driver of the auto had driven the same in a rash and negligent manner, due to which, the auto turned turtle. Due to accident, the petitioner sustained grievous injuries on various parts of the body and took treatment as in-patient in Government Hospital, Nizamabad. The Station House Officer, Yellareddy registered a case in Crime No.32 of 2002 under Section 337 I.P.C. against the driver of the auto. The petitioner spent huge amount towards medicines and treatment. By the time of accident, the petitioner was earning Rs.15,000/- per month as licenced documentary writer. Due to injuries, the petitioner could not attend to his work for long time, thereby, lost his income. Hence, the petition.

4. The first respondent remained *ex-parte*. The second respondent – Insurance Company filed written statement denying the material averments *inter alia* contending that the driver of the auto was not having valid and effective driving licence as on the date of accident. Therefore, this respondent is not liable to pay compensation, if any, to the petitioner. The auto was not involved in the accident as pleaded by the petitioner. The first respondent had violated the terms and conditions of policy by allowing more passengers to travel in the auto than the seating capacity. The amount of compensation claimed by the petitioner is highly excessive and exorbitant. Hence, the petition may be dismissed.

5. Basing on the material available on record, the Tribunal framed three issues.

6. During the course of trial, on behalf of the petitioner, PWs.1 and 2 were examined and Exs.A.1 to A.8 were marked. On behalf of the second respondent, no oral evidence was adduced and Ex.B.1 – Policy was marked.

7. The Tribunal, on appraisal of oral, documentary evidence and other material available on record, arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the auto and allowed the petition in part by awarding compensation of Rs.48,000/-.

8. Feeling aggrieved by the judgment and award of the Tribunal, the petitioner/claimant preferred the present appeal.

9. Sri Venkateswar Varanasi, the learned counsel for the appellant/petitioner, submitted that the Tribunal has not awarded any amount towards medicines and extra nourishment. He further submitted that the Tribunal has not properly assessed the income of

the petitioner.

10. Per contra, Sri P.Harinath Gupta, the learned Standing Counsel for New India Assurance Company Limited (second respondent), submitted that the compensation awarded by the Tribunal under various heads is just and reasonable. He further submitted that there are no grounds much less valid grounds to interfere with the judgment and award passed by the Tribunal.

11. 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?

12. Point:

The Tribunal while deciding issue No.1, arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the auto. The fact remains that at the time of accident the petitioner was travelling in the auto. For one reason or other, respondent Nos.1 and 2 did not choose to file an appeal challenging the finding of the Tribunal so far as the manner of the accident is concerned. The oral testimony of PW.1 is fully supported by the recitals of Ex.A.1, C.C. of F.I.R. and Ex.A.2, C.C. of charge sheet so far as the manner of the accident is concerned. Basing on the material available on record, I am of the considered view that the accident occurred due to the rash and negligent driving of the driver of the auto.

13. The Tribunal awarded an amount of Rs.48,000/- under the following heads:

Grievous injury	----	Rs.20,000/-
Loss of earnings	----	Rs.18,000/-
Pain and suffering	-----	Rs.10,000/-
		=====
Total:		Rs.48,000/-
		=====

The oral testimony of PWs.1 and 2 coupled with Exs.A.3 and A.6 clearly reveals that the petitioner received one fracture. Due to fracture, the petitioner might have suffered a lot. Hence, I am inclined to award an amount of Rs.20,000/- towards pain and suffering. Even though the petitioner took treatment in Government Hospital, he might have spent some amount towards medicines. It is a known fact that a person who takes treatment in Government Hospital has to purchase the medicines from outside. In case of fractures, the doctors advise the injured person to take X-Ray films from outside. The petitioner might have spent some amount towards medicines. Hence, I am inclined to award an amount of Rs.5,000/- towards medicines and treatment. I am also inclined to award an amount of Rs.1,000/- towards extra nourishment. The oral testimony of PW.1 clearly reveals that he is a licenced documentary writer. A perusal of Ex.A.7 clearly reveals that the petitioner is a documentary writer by profession. Due to fracture, the petitioner might not have attended to his work for a period of six months as observed by the Tribunal. The Tribunal assessed the income of the petitioner as Rs.3,000/-. A documentary writer may or may not get the work throughout the year. In the absence of documentary evidence, some guess work is inevitable to assess the income of the person. As per the principle enunciated in **Ramachandrappa vs. Manager, Royal Sundaram Alliance Insurance Co. Ltd.**^[1] and **Syed Sadiq vs. Divisional Manager, United India Insurance Co. Ltd.**^[2], the Tribunal or the Court has to consider the avocation of the injured or the deceased to assess the income.

14. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am of the opinion that the documentary writer may earn Rs.6,500/- per month. The loss of dependency comes to Rs.39,000/- (6,500 x 6). Except the

oral testimony of PW.2, there is no other documentary evidence to prove that the petitioner incurred disability. If really the petitioner incurred disability, what prevented him to obtain a disability certificate from the Medical Board? In the absence of authenticated document, it is not safe to place reliance on the oral testimony of PW.1, who is an interested witness. Therefore, I am unable to agree that the petitioner incurred disability. The petitioner is not entitled for any amount under the head of loss of future earnings. Due to fracture, the petitioner may not enjoy his life like other persons. Hence, I am inclined to award an amount of Rs.5,000/- towards loss of future amenities.

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

Pain and suffering	-----	Rs.20,000/-
For medicines, treatment and extra nourishment	-----	Rs. 5,000/-
Loss of dependency	-----	Rs.39,000/-
Loss of future amenities	-----	Rs. 5,000/-
		=====
Total:	-----	Rs.69,000/-
		=====

15. Therefore, I am of the considered view that the compensation awarded under various heads is just and reasonable to meet the ends of justice. The first respondent being the owner of the auto is vicariously liable for the wrongful acts done by his driver during the course of employment. Ex.B.1 – Policy was in force as on the date of accident. Hence, the second respondent has to indemnify the liability of the first respondent. Therefore, respondent Nos.1 and 2 are jointly and severally liable to pay the compensation to the petitioner.

16. In the result, the Appeal is allowed in part enhancing the quantum of compensation from Rs.48,000/- to Rs.69,000/- with interest at the rate of 9% per annum as awarded by the Tribunal from the date

of petition till the date of realisation. The respondents are hereby directed to deposit the amount within two (2) months from the date of receipt of a copy of this judgment. On such deposit, the petitioner is entitled to withdraw the entire amount. There shall be no order as to costs.

17. Consequently, Miscellaneous Petitions, if any, pending in this Appeal shall stand closed.

T.SUNIL CHOWDARY, J

28th January, 2015
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[\[1\]](#) 2011 ACJ 2436

[\[2\]](#) 2014 (2) SCC 735