

HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A. No.896 OF 2009

AND

CROSS-OBJECTIONS (S.R.) No.27950 of 2009

COMMON JUDGMENT:

This appeal is filed by the second respondent-insurance company challenging the judgment and award dated 25.10.2007 passed in M.V.O.P. No.650 of 2005 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-IV Additional District Judge, Tirupati. The petitioner has filed Cross-objections (SR) No.27950 of 2009 seeking enhancement of compensation.

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

3. The facts relevant for disposal of this appeal are in brief as follows: On 14.4.2004 at about 10.30 am, the petitioner and one K.Ramachandra Reddy were proceeding towards LIC Office, Tirupati from S.V. University on TVS 50 Moped. When they reached Sanskrit Vidyapeetam, the driver of the car bearing No.AP 10H 6665 came in opposite direction in a rash and negligent manner and hit the TVS Moped. The accident occurred due to rash and negligent driving of the driver of the car against whom the Station House Officer, Tirupati Traffic Police Station registered a case in Crime No.65 of 2004 under Section 338 IPC. Due to the accident, the petitioner sustained injuries to left leg and other parts of the body. The petitioner took treatment as inpatient in S.V.R.R. G.G. Hospital, Tirupati. The petitioner spent huge amount towards medicines and treatment. At the time of the accident, the petitioner was aged about 34 years and drawing a salary of Rs.6,000/- per month as an employee of S.V. University. Due to the injuries sustained in the accident, the petitioner could not attend to duty for a long time. The car, which belongs to the first respondent,

was insured with the second respondent. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioner. Hence the petition claiming a compensation of Rs.3,00,000/-.

4. The first respondent remained ex parte. The second respondent filed counter denying all the material averments made in the petition *inter alia* contending that the accident occurred due to the negligence of the rider of TVS Moped and there was no negligence on the part of the driver of the car. It is the duty of the petitioner to prove that the driver of the car was having valid and effective driving licence as on the date of the accident. The amount of compensation claimed by the petitioner under various heads is highly excessive and exorbitant. Hence the petition is liable to be dismissed.

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

- 1) Whether the petitioner sustained injuries in a motor vehicle accident caused on 14.4.2004 at about 10.30 AM near Sanskrit Vidyapeetam, Tirupati due to rash and negligent driving of the car bearing No.AP 10H 6665 belonging to the first respondent, insured with the 2nd respondent?
- 2) Whether the petitioner is entitled for compensation as prayed for in the petition?
- 3) To what relief?

6. During the course of trial, on behalf of the petitioner, P.Ws.1 to 3 were examined and Exs.A1 to A7, Exs.X1 and X2 were marked. On behalf of the second respondent, no oral or documentary evidence was adduced.

7. Basing on the oral, documentary evidence and other material 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 car and allowed the petition in part by awarding compensation of Rs.1,40,369/- with proportionate costs and interest at the rate of 7.5% per annum from the date of petition till the date of payment, directing the respondent Nos.1 and 2 to pay the same jointly and severally within two months. Feeling aggrieved by the judgment and award, the second respondent – insurance company preferred the appeal. Being not satisfied with the quantum of compensation awarded, the claimant preferred the cross-objections.

8. The contention of Sri T.Ramulu, learned standing counsel for the appellant-insurance company is two fold:

- (1) The Tribunal failed to consider that the rider of TVS Moped was also equally responsible to cause the accident.
- (2) The quantum of compensation awarded by the Tribunal is on higher side.

9. ***Per contra***, Sri K.Maheswara Rao, learned counsel for the claimant-cross-objector submitted that the amount of compensation awarded by the Tribunal is too meager.

10. Now, the points that arise for consideration in this appeal are:

- (1) *Whether there was any negligence on the part of the petitioner to cause the accident?*
- (2) *Whether the Tribunal has awarded just and reasonable compensation to the petitioner or not?*

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Point No.1:

11. In order to prove the manner of accident, petitioner examined himself as P.W.1 and got marked Exs.A1 and A2, certified copies of the F.I.R and charge sheet. As per the testimony of P.W.1, as on the date of the accident, himself and Ramachandra Reddy were proceeding on the TVS Moped. When they reached near Sanskrit Vidyapeetam, the driver of the car bearing No.AP 10H 6665 came in opposite direction in a rash and negligent manner and hit the TVS

Moped. In the cross-examination of P.W.1, nothing is elicited to shake his testimony so far as the manner of the accident is concerned. Apart from P.W.1, the driver of the car is competent person to speak about the manner of the accident and negligence, if any, on the part of the rider of the TVS Moped. The second respondent-insurance company did not take any steps to examine the driver of the car or any other eye witness to the accident. Mere taking up the plea of contributory negligence in the counter by itself would not amount to proof of the stand taken by the second respondent. The oral testimony of P.W.1 coupled with Ex.A1 and A2, certified copies of the F.I.R. and charge sheet, clearly reveals that the accident occurred due to rash and negligent driving of the driver of the car bearing No.AP 10H 6665. There is no material to establish negligence, if any, on the part of the rider of the TVS Moped. The Tribunal has considered the material available on record in right perspective and arrived at the conclusion that the accident occurred due to rash and negligent driving of the driver of the car. I see no reasons, much less valid reasons, to interfere with the well-considered finding of the Tribunal on this aspect. I am fully agreeing with the finding recorded by the Tribunal on issue No.1. In that view of the matter, I am unable to accede to the contention of the learned standing counsel for the second respondent that the rider of the TVS Moped also responsible to cause the accident. Hence, the point No.1 is answered against the insurance company and in favour of the claimant.

Point No.2:

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

1. Loss of earning power due to
Permanent disability : 1,22,368
2. Pain and suffering : 7,000

3.	Medical expenses and extra		
	Diet	:	10,000
4.	Transport charges	:	1,000
	Total	:	1,40,369

The predominant contention of learned counsel for the second respondent is that the Tribunal committed grave error by awarding an amount of Rs.1,22,369/- towards loss of earning power.

13. In **Raj Kumar v Ajay Kumar**^[1] and **Sanjay Kumar v Ashok Kumar**^[2], the Hon'ble apex Court laid guidelines for awarding compensation in injury cases. Let me consider the facts of the case on hand, in the light of the principles enunciated in the cases cited supra.

14. As per the oral testimony of P.W.2-Dr.Haribabu, the petitioner sustained grievous injuries to left leg and two injuries on parietal region. His testimony further reveals that the petitioner underwent operation on 27.4.2004. The fact remains that the petitioner sustained one fracture and two simple injuries. The Tribunal awarded an amount of Rs.7,000/- towards pain and suffering, which is too meager. Taking into consideration the nature of the fracture and two injuries sustained by the petitioner, I am inclined to award an amount of Rs.25,000/- towards pain and suffering. The Tribunal, after considering Ex.A5 medical bills, rightly awarded an amount of Rs.10,000/- towards medical expenses. The Tribunal also rightly awarded Rs.1,000/- towards transportation. It is a known fact that the injured has to take special diet for healing of injuries and uniting of fracture. Hence, I am inclined to award an amount of Rs.3,000/- towards extra nourishment.

15. The Tribunal awarded an amount of Rs.1,22,369/- towards loss of future earnings due to permanent disability by considering the age

and salary of the petitioner. It is an admitted fact that by the time of the accident, the petitioner was working in Watch and Ward Department of S.V. University, Tirupati. The fact remains that the petitioner is University employee. As per Ex.A4, disability certificate, the petitioner incurred 30% disability. P.W.2 (Doctor) in unequivocal terms deposed that the petitioner incurred 15% disability only. In the cross-examination, he further deposed that there is every possibility of further reduction of disability incurred by the petitioner. It is needless to say that the functional disability incurred by the injured person cannot be equated with the loss of future earnings. The permanent disability of 15% incurred by the petitioner no way affects his future earning capacity. The petitioner did not adduce any evidence to establish that the disability incurred by him may adversely affect his future promotion. In such circumstances, granting of compensation under the head 'loss of earning power' is unwarranted. Hence, I am of the considered view that the Tribunal committed error by awarding an amount of Rs.1,22,369/- towards loss of earning power. Due to the fracture, the petitioner might not have attended his duty at least for a period of one month. The petitioner might have applied for either medical leave or earned leave during that period. Further, if the unfortunate accident might not have occurred, there is no necessity for the petitioner to apply leave of any type. Hence, I am inclined to award an amount of Rs.6,000/- towards loss of earnings during the period of treatment.

16. The petitioner incurred 15% disability due to fracture of left leg. The petitioner may not enjoy his life as he enjoyed prior to the accident. Taking into consideration the facts and circumstances of the case and the nature of the employment of the petitioner, I am inclined to award an amount of Rs.50,000/- towards loss of future amenities. Thus, in all, the petitioner is entitled to the compensation under the following heads:

1.	Pain and suffering	:	25,000
2.	Medical expenses	:	10,000
3.	Transportation charges	:	1,000
4.	Extra nourishment	:	3,000
5.	Loss of earnings during the Period of treatment	:	6,000
6.	Loss of future amenities	:	50,000
	Total	:	95,000

The compensation awarded under the above heads is fair, just and reasonable to meet the ends of justice. I am agreeing with the submission made by the learned counsel for the appellant-insurance company that the amount of compensation awarded by the Tribunal is on higher side.

17. In the result, the MACMA is partly allowed reducing the quantum of compensation from Rs.1,40,369/- to Rs.95,000/- (Rupees ninety five thousand only). The respondent Nos.1 and 2 are jointly and severally liable to pay the same with proportionate costs 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. Cross-objections (S.R.) No.27950 of 2009 is dismissed without costs. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

T.SUNIL CHOWDARY, J

Date: 03.03.2015
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[\[1\]](#) (2011) 1 SCC 343

[2] (2014) 5 SCC 330