

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY
CMA No.2791 of 2004

JUDGMENT:

1 Dissatisfied with the amount of compensation awarded in O.P.No.625 of 1995 on the file of Chairman, Motor Accidents Claims Tribunal-cum-Additional District Judge, Nizamabad, wherein and whereby an amount of Rs.20,000/- was awarded as against a claim of Rs.1,28,000/-, by the judgment and award dated 19.09.2003, the claimant has filed the present appeal.

2 For the sake of convenience, the parties to this appeal are hereinafter referred to as they are arrayed before the Tribunal.

3 The facts leading to the filing of the present appeal are briefly as follows:

4 On 06.03.1995 the petitioner and others were proceeding from Hyderabad towards Nirmal on a car bearing No.APU 7300. When the car reached near Kupriyal bus stand, the driver of the lorry bearing No.AP 16 T 1197 i.e. second respondent herein had driven the same in a rash and negligent manner and dashed against the car. The accident occurred due to the rash and negligent driving of the driver of the lorry. In connection with the said accident, the police concerned registered a criminal case against the driver of the lorry. Due to the accident, the petitioner sustained grievous injuries on various parts of her body. The petitioner took treatment as inpatient in Government General

Hospital, Kamareddy and also in Vijaya Health Care and Multi Specialty hospital, Hyderabad. The petitioner spent huge amount towards medicines and treatment. Due to the injuries, the petitioner could not attend her work, thereby lost her income. As on the date of accident, the lorry bearing No.AP 16 T 1197, which belongs to the first respondent, was validly insured with the third respondent. Hence the petitioner filed claim petition seeking compensation of Rs.1,28,000/- contending that all the respondents are jointly and severally liable to pay compensation to him.

5 Respondent Nos.1 and 2 remained ex parte. Third respondent filed written statement denying the material averments made in the petition, inter *alia* contending that the accident occurred due to the negligent driving of the driver of the car and that there was no negligence on the part of the second respondent. The petitioner sustained only simple injuries and that the amount of compensation claimed by the petitioner under various heads is highly excessive and exorbitant. The present petition is not maintainable for non-impleading of the driver, owner and insurer of car. Therefore, the petition is liable to be dismissed.

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

- i. Whether the accident was due to rash and negligent driving of the lorry bearing No.AP-16-T-1197 by its driver only?
- ii. Whether the petitioner is entitled for compensation. If so, to what amount and from which of the respondents?

iii. To what relief?

7 During the course of trial, on behalf of the petitioner P.Ws.1 and 2 were examined and Exs.A.1 to A.10 were marked. No oral or documentary evidence was adduced on behalf of the respondents.

8 The Tribunal, after appreciating the oral, documentary evidence and other material available on record, held that the accident occurred due to the rash and negligent driving of the driver of the lorry i.e. second respondent and allowed the petition in part by granting Rs.20,000/- as compensation to the petitioner. As stated supra, dissatisfied with the amount of compensation awarded by the tribunal, the claimant filed the present appeal.

9 The learned counsel for the petitioner submitted that the Tribunal has not appreciated the oral testimony of P.W.2 and the recitals of Ex.A.10 disability certificate in right perspective. He further submitted that the amount of compensation awarded by the Tribunal is too meager.

10 *Per contra*, the learned counsel for the third respondent submitted that the Tribunal considered the discrepancy between Ex.A.2 - Injury Certificate, Ex.A.4 - Discharge Summary and Ex.A.10 - Disability Certificate in right perspective. He further submitted that there is no nexus to the injuries sustained by the petitioner as mentioned in Exs.A.2 and A.4 and the nature of fractures mentioned in disability certificate – Ex.A.10.

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

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

Point:

12 The finding of the Tribunal that the accident occurred due to rash and negligent driving of the driver of the lorry bearing No.AP 16 T 1197 became final in view of non-filing of any appeal or cross objections by the third respondent. Hence I am of the considered view that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.AP 16 T 1197 which resulted injuries to the petitioner.

13 As per the testimony of P.W.1, she sustained injuries on various parts of the body. As per the oral testimony of P.W.2, the petitioner sustained fracture to nasal bone and fracture of neck. As per the testimony of P.W.2, the petitioner incurred 30% partial permanent disability. There is no nexus between the injuries sustained by the petitioner and the disability certificate. Even as per the medical certificate issued by Vijaya Health Care Multi Specialty hospital, the petitioner did not sustain fracture to neck and nasal bone. The recitals of Ex.A.4 falsify the contents of Ex.A.10 disability certificate. The Tribunal considered the validity of these documents in para No.14 of the award. If the Tribunal or this Court places any reliance on this type of disability certificates, it would, certainly, amount to

miscarriage of justice. In my considered view, the Tribunal has rightly discarded Ex.A.10 disability certificate. I am fully agreeing with the findings recorded by the Tribunal.

14 The fact remains that the petitioner sustained two injuries; one on scalp and another on her right knee. It seems that the petitioner sustained injuries on her vital parts of the body. Having regard to the nature of injuries sustained by the petitioner, I am inclined to award an amount of Rs.15,000/- towards pain and suffering.

15 Admittedly the petitioner took treatment in Government hospital, Kamareddy and in Vijaya Health Care hospital, Hyderabad and other hospitals. Hence the petitioner might have spent some amount towards medicines. Therefore, I am inclined to award an amount of Rs.10,000/- towards medicines and Rs.5,000/- towards transportation and other incidental expenses.

16 Therefore, the amount of compensation to which the petitioner is entitled, under various heads, is as follows:

Pain and suffering:	Rs.15,000/-
Medicines and treatment:	Rs.10,000/-
Transportation and other	Rs.5,000/-
Incidental expenses	
	=====
	Total: Rs.30,000/-
	=====

17 In the result, the appeal is allowed in part, the amount of compensation awarded by the Tribunal is enhanced from Rs.20,000/- to Rs.30,000/- with interest at 7.5% p.a. on the enhanced amount of compensation from the date of filing of

the petition till the date of realization. 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: 30.06.2015

Kvsn