

HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A. No.923 OF 2009

JUDGMENT:

This appeal is filed by the claimant challenging the judgment and award dated 10.11.2008 passed in M.V.O.P. No.8 of 2005 on the file of the Motor Accident Claims Tribunal-cum-District Judge, Adilabad.

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 14.6.2004 at about 9.30 P.M., the petitioner was proceeding on motor cycle in Bhainsa town. When he reached near petrol bunk, the driver of jeep bearing No.MH 26-297 came in opposite direction in a rash and negligent manner and hit the motor cycle of the petitioner. The accident occurred due to the rash and negligent driving of the driver of the jeep, against whom the Station House Officer, Bhainsa Police Station registered a case in crime No.54 of 2004 under Section 338 IPC. Due to the accident, the petitioner sustained grievous injuries. Immediately after the accident, the petitioner was shifted to Government Hospital, Bhainsa and thereafter he was taken to Hitech Multi Super Speciality Hospital. The right leg of the petitioner was amputated below the knee. The petitioner spent huge amount towards medicines and treatment. The jeep, 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.3,50,000/- to the petitioner with interest and costs.

4. The first respondent-owner of the jeep remained *ex parte*. The second respondent-insurer of the jeep filed counter denying all the averments made in the petition *inter alia* contending that the accident

occurred due to the rash and negligent driving of the motor cycle by the petitioner and there was no negligence on the part of the jeep driver. The present petition is not maintainable for non-joining of the owner and insurer of the motor cycle. The amount of compensation claimed, under various heads, is highly excessive and exorbitant. Hence the petition is liable to be dismissed so far as this respondent is concerned.

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

- 1) Whether the pleaded accident occurred resulting in injuries to the claimant and amputation in his right lower limb and if so whether the jeep of the first respondent is involved in the accident?
- 2) Whether the accident occurred due to the fault of the driver of the first respondent's jeep and whether claimant was also responsible for the accident?
- 3) Whether the first respondent's jeep stood insured with the second respondent's insurance company on the date of the accident and if so whether the said policy covers the risk of the claimant?
- 4) Whether the claimant is in principle entitled to compensation and if so to what amount and what is the liability of the respondents 1 and 2?
- 5) To what relief?

6. During the course of the trial, on behalf of the petitioner, P.Ws.1 to 4 were examined and Exs.A1 to A9 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 occurred due to rash and negligent driving of the driver of the jeep, which resulted in injuries to the petitioner, and allowed the petition in part by awarding compensation of Rs.1,69,500/-. Dissatisfied with the quantum of compensation awarded by the Tribunal, the claimant preferred the appeal.

8. Heard Sri S.Chandra Shekhar, learned counsel for the appellant – claimant and Sri N.Mohan Krishna, learned standing counsel for the second respondent – insurance company.

9. The learned counsel for the claimant submitted that the finding of the Tribunal that the petitioner was also equally responsible to cause the accident is not supported by oral or documentary evidence. ***Per contra***, learned standing counsel for the insurance company submitted that the Tribunal has assigned cogent and valid reasons to its findings and therefore, it is not a fit case to interfere with the judgment and award of the Tribunal.

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

Whether the Tribunal is justified in arriving at a conclusion that the petitioner was also equally responsible to cause to the accident?

Point:

11. Learned counsel for both the parties in all fairness submitted that they are not disputing the quantum of compensation awarded by the Tribunal.

12. The petitioner filed the petition under Section 166 of the Motor Vehicles Act claiming compensation on the ground that driver of the jeep is responsible for the accident. It is needless to say that the burden of proof lies on the petitioner to establish rashness or negligence on the part of the driver of the offending jeep. In order to prove the manner of accident, the petitioner examined himself as P.W.1 and got marked Exs.A1 and A3. P.W.3 is eye witness to the accident.

13. The oral testimony of P.Ws.1 and 3 reveals that the accident occurred due to the rash and negligent driving of the driver of the jeep. Learned standing counsel for the insurance company, during the cross-examination of these witnesses, elicited several aspects to

prove the negligence on the part of the petitioner. The accident occurred on 14.6.2004 at about 9.30 P.M. near petrol bunk, Bhainsa, which is a busy locality. Admittedly neither the petitioner nor P.W.3 lodged a complaint to the Police on the same day. The brother of the petitioner filed a complaint on the file of the Judicial First Class Magistrate, Bhainsa on 26.6.2004 and the same was referred to the Station House Officer, Bhainsa on 02.7.2004. Admittedly, there is a delay of 12 days in reporting the factum of accident. As per the recitals of Ex.A3, certified copy of the F.I.R., P.W.3 was pillion rider on the motor cycle. If the testimony of P.W.3 is taken into consideration, he was not a pillion rider on the motor cycle of the petitioner at the time of the accident. The brother of the petitioner, in the private complaint, stated that the petitioner was taking treatment at the relevant point of time. The brother of the petitioner, who is *de facto* complainant, is competent person to say whether P.W.3 was pillion rider or not. All these aspects create any amount of doubt in the mind of the court as to the manner of the accident and negligence on the part of the petitioner. If really there was no negligence on the part of the petitioner what prevented him or P.W.3 to lodge a complaint immediately after the accident. In order to cover up laches on the part of the petitioner, the possibility of filing complaint by the brother of the petitioner cannot be ruled out. The petitioner has taken different stands with regard to the manner of the accident. In these circumstances, I am agreeing with the finding recorded by the Tribunal that it is a case of head-on-collision. In case of head-on-collision, the possibility of negligence on the part of the drivers of both the vehicles cannot be ruled out completely. If the petitioner has taken reasonable care, there is every possibility to avoid the accident. In the cross-examination also, P.Ws.1 and 3 have given different versions with regard to the manner of accident. P.W.1 being the claimant and P.W.3 being close relative of P.W.1, deposing falsely in order to fix total negligence on the part of

the jeep driver cannot be ruled out. The Tribunal has to take into consideration the ground realities, more particularly in this type of cases, in order to protect the insurance company, who are dealing with public money. There is no doubt, the finding of the Tribunal or court shall not be based on assumptions and presumptions. It is needless to say that the Tribunal or court can draw inference basing on the facts pleaded and proved. In the instant case, learned standing counsel for the insurance company has elicited several aspects to prove the negligence on the part of the petitioner also.

14. The Tribunal appreciated the oral and documentary evidence in right perspective. The fact remains that the right leg of the petitioner was amputated below the knee. While apportioning the negligence, the Tribunal or court has to take into consideration the nature of the vehicles involved in the accident. Taking into consideration the material available on record, I am of the considered view that fixing of negligence on the part of the jeep driver and the petitioner in the ratio of 75% and 25% respectively would meet the ends of justice. The finding of the Tribunal fixing negligence on the part of the jeep driver and petitioner in the ratio of 50% each is liable to be modified. Having regard to the facts and circumstances of the case, this court is of considered view that the accident occurred due to the rash and negligent driving of the driver of the jeep and rider of motor cycle i.e., the petitioner in the ratio of 75% and 25% respectively. Accordingly, the point is answered.

15. The Tribunal awarded an amount of Rs.3,39,000/- towards compensation. The petitioner incurred 60% functional disability. The Tribunal arrived at a conclusion that 60% functional disability may affect the earning capacity of the petitioner to the extent of 50%. The Tribunal assessed the loss of future earnings by following due procedure. Viewed from any angle, awarding of compensation of

Rs.3,39,000/- is just and reasonable. In view of the finding of this court, the petitioner has to forego 25% of compensation amount which comes to Rs.84,750/-. After deducting the said amount from the total compensation, the petitioner is entitled to (Rs.3,39,000 – 84,750) Rs.2,54,250/-.

16. In the result, the appeal is allowed in part, enhancing compensation from Rs.1,69,500/- to Rs.2,54,250/- (Rupees two lakhs fifty four thousand two hundred and fifty 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: 11.3.2015

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