

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.680 OF 2004

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988, challenging the judgment and award dated 17.10.2003 passed in M.V.O.P.No.435 of 1998 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, Ongole, wherein and whereby an amount of Rs.2,21,499/- was awarded to the claimant as against the claim of Rs.4,00,000/-.

2. The parties to this appeal 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 are briefly as follows: On 14.4.1997, the petitioner boarded APSRTC bus bearing No.AP 9Z 7642 at Ongole to go to Guntur. When the bus reached near Jagarlamudivaripalem, the driver of the lorry bearing No.AP 15T 8069 had driven the same in a rash and negligent manner and dashed against the RTC bus. The accident occurred due to the rash and negligent driving of the driver of the lorry against whom the Station House Officer, J.Panguluru Police Station registered a case in Crime No.18 of 1997 under Section 338 IPC. Due to the accident, the petitioner sustained crush injury to his right hand. Immediately after the accident, the petitioner was shifted to Vijaya Hospital, Ongole and after the first aid; he was taken to Apollo Hospital, Hyderabad, where he was treated as inpatient for long time. By the time of the accident, the petitioner was aged about 21 years and used to earn Rs.4,000/- per month. The lorry bearing No.AP 15T 8069, which belongs to the first respondent, was insured with the second respondent; and the third respondent-APSRTC is the owner of bus bearing No.AP 9Z 7642; therefore, the respondent Nos.1 to 3 are jointly and severally liable to

pay compensation to the petitioner.

4. The first respondent filed counter denying all the averments made in the petition including the manner of the accident. The lorry of this respondent was insured with the second respondent at the time of the accident; therefore, the second respondent alone is liable to pay compensation, if any, to the petitioner. The amount of compensation claimed by the petitioner is on higher side.

5. The second respondent filed written statement denying all the averments made in the petition including the manner of the accident and the nature of the injuries sustained by the petitioner. The accident occurred due to the rash and negligent driving of the driver of the RTC bus and there was no negligence on the part of the driver of the lorry. It is the duty of the petitioner to prove that the driver of the lorry 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 so far as this respondent is concerned.

6. The third respondent filed counter, *inter alia*, contending that the accident occurred due to the rash and negligent driving of the driver of the lorry. This respondent was unnecessarily impleaded as party to this petition. As per the recitals of F.I.R. and charge sheet, the accident occurred due to the rash and negligent driving of the driver of the lorry. Hence, the petition is liable to be dismissed so far as this respondent is concerned.

7. Basing on the above pleadings, the Tribunal framed the following issues and additional issues:

1. Whether the accident occurred due to the rash and negligent driving of the driver of lorry bearing No.AP 15T 8069?

2. Whether the petitioner is entitled to any compensation? If so, to what extent and from whom?

3. To what relief?

Additional Issues:

1. Whether there is any contributory negligence on the part of the driver of R3 in causing the accident?

2. Whether the petitioner is entitled for any relief against R3?

8. During the course of trial, on behalf of the petitioner, P.Ws.1 to 4 were examined and Exs.A1 to A8 were marked. On behalf of the second respondent, R.W.1 was examined and Ex.B1 was marked.

9. On appraising 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 lorry which resulted in injuries to the petitioner, and allowed the petition in part by awarding compensation of Rs.2,21,499/- directing the respondent Nos.1 and 2 to pay the compensation jointly and severally. The petition against the third respondent was dismissed. Being not satisfied by the quantum of compensation awarded by the Tribunal, the petitioner preferred the present appeal.

10. The contention of the learned counsel for the petitioner–claimant is two fold:

(1) The Tribunal committed error while discarding the testimony of P.Ws.3 and 4 (Doctors), who treated the petitioner; and

(2) The Tribunal has not awarded just and reasonable compensation?

11. Though notices were served on respondent Nos.1 to 3, they did not choose to appear before this court and contest the appeal. Hence, I am inclined to dispose of the appeal on merits even in the absence of the respondents.

12. Now the point that arises for consideration in this appeal is as follows:

Whether the Tribunal has awarded just and reasonable compensation?

Point:

13. As per the findings of the Tribunal, the accident occurred due to the rash and negligent driving of the driver of the lorry, which resulted in injuries to the petitioner. The petition against the third respondent was dismissed basing on the finding of the Tribunal that there was no contributory negligence on the part of the driver of the RTC bus. The finding recorded by the Tribunal on issue No.1 and Additional issue No.1 became final in view of non-filing of appeal or cross-objections by the respondent Nos.1 and 2 challenging the said finding. The Tribunal considered the oral and documentary evidence in right perspective and arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the lorry. I am fully agreeing with the finding recorded by the Tribunal on issue No.1 and additional issue No.1. Hence, I am of the considered view that the accident occurred due to the rash and negligent driving of the driver of the lorry and there was no contributory negligence on the part of the driver of the RTC bus.

14. In order to prove the nature of the injuries sustained by the petitioner, he placed reliance on the oral testimony of P.Ws.3 and 4 (Doctors) and Ex.A6 (discharge certificate issued by Apollo Hospital, Hyderabad). As per Ex.A6, the petitioner sustained two fractures. Basing on Ex.A6, the Tribunal awarded an amount of Rs.50,000/- towards injuries and pain and suffering. The petitioner produced medical bills (Ex.A7) for an amount of Rs.1,21,499/-. The Tribunal, taking into consideration the nature of the fractures sustained by the petitioner, awarded an amount of Rs.1,21,499/- towards medicines and

treatment. The Tribunal also awarded an amount of Rs.50,000/- towards future surgery.

15. Admittedly, the petitioner belongs to Prakasam District. A perusal of Ex.A6 reveals that the petitioner took treatment as inpatient in Apollo Hospital, Hyderabad from 15.4.1997 to 05.5.1997. One of the family members might have accompanied the petitioner from Ongole to Hyderabad and stayed in Apollo Hospital, Hyderabad to look after his welfare. The Tribunal has not awarded any amount towards transportation charges. Taking into consideration the facts and circumstances of the case, I am inclined to award an amount of Rs.15,000/- towards transportation charges. The Doctors may advise the patients to take special diet for uniting of the fractures. The petitioner might have taken special diet for not less than three months; hence I am inclined to award Rs.10,000/- towards extra nourishment. The petitioner might not have attended to his work at least for a period of four months. The Tribunal has not awarded any amount towards loss of earnings during the period of treatment or rest. Even by attending coolie work, a person may earn Rs.3,000/- per month in the year 1997. The petitioner might not have attended the work for not less than five months; hence I am inclined to award Rs.15,000/- towards loss of earnings.

16. Absolutely there is no material on record to establish that the petitioner incurred permanent disability. If really the petitioner had incurred disability, what prevented him to approach the Medical Board and obtain disability certificate. A perusal of the record clearly reveals that the petitioner has not produced relevant documents to substantiate his case. In the absence of disability certificate, it is not possible for this court to arrive at a conclusion that the petitioner incurred permanent disability. The material available on record falls short to establish that the petitioner incurred permanent disability. Therefore,

the petitioner is not entitled to any amount under the head loss of future earnings. The amount of compensation for which the petitioner entitled to is as follows:

1.	Pain and suffering	:	50,000
2.	Future surgery	:	50,000
3.	Medicines and treatment	:	1,21,499
4.	Transportation charges	:	15,000
5.	Extra nourishment	:	10,000
6.	Loss of earnings	:	15,000
Total			: 2,61,499

Thus the compensation awarded under the above heads is just and reasonable.

17. Having regard to the facts and circumstances of the case, I am of the considered view that the petitioner is entitled to the compensation of Rs.2,61,499/-, which is just and reasonable. The petitioner is entitled to interest at 7.5% per annum on the enhanced amount of compensation. Accordingly, the point is answered.

18. In the result, the appeal is allowed in part, enhancing the compensation amount from Rs.2,21,499/- to Rs.2,61,499/-. The petitioner is entitled to interest on the enhanced compensation amount of Rs.40,000/- at 7.5% per annum from the date of the petition till realisation. The respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioner. The dismissal of the petition against the third respondent holds good. There shall be no order as to costs in this appeal. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

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T.SUNIL CHOWDARY, J.

Date: 14th August, 2015.

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