

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.1295 OF 2009

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') by the appellant/respondent No.2 challenging the judgment and award, dated 14.06.2007, passed in M.V.O.P.No.953 of 2005 on the file of the Special Judge for SC and ST (POA) Act-cum-VI Additional District and Sessions Judge-cum-Chairman, Motor Accidents Claims Tribunal, Kurnool (for short, 'the Tribunal').

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

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

On 20.03.2005 in the afternoon, the petitioner and some others have boarded the auto bearing No.AP-21-T-8143 to go to Dhone. When the auto reached near Telugu Narasamma Garden, the driver of the Lorry bearing No.AP-9Y-0414 had driven the same in a rash and negligent manner and hit the auto from opposite direction. The accident occurred due to the rash and negligent driving of the driver of the lorry against whom the Station House Officer, Dhone Police Station registered a case in Crime No.62 of 2005 for the offence under Section 338 I.P.C. Due to accident, the petitioner sustained fracture to left hand, nose and other parts of the body and took treatment as inpatient for a period of 22 days in Government Hospital, Kurnool. The petitioner's left hand was amputated. By the time of accident, the petitioner was aged about seven years. The parents of the petitioner spent huge amount towards medicines and treatment. The lorry bearing No.

AP-9Y-0414, which belongs to respondent No.1, was insured with respondent No.2 – Insurance Company as on the date of accident. Therefore, respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.4,60,000/- to the petitioner.

4. Respondent No.1 remained *ex-parte*. Respondent No.2 filed written statement denying all the averments made in the petition *inter alia* contending that the accident occurred due to the rash and negligent driving of the driver of the auto, therefore, the

petition is liable to be dismissed for non-impleading of the driver, owner and insurer of the auto bearing No.AP-21-T-8143. The petitioner in collusion with the doctors created false wound certificates to claim more compensation. The amount of compensation claimed by the petitioner under various heads is highly excessive and exorbitant. Hence, the petition may be dismissed.

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

1. Whether the accident dt:20.03.2005 took place near Telugu Narasamma Garden, Dhone (M), at about 2 p.m., was due to rash and negligent driving of the lorry bearing registration No.AP.9.Y.0414 or there was any negligence on the part of the driver of the auto bearing registration No.AP.21.T.8143?
2. Whether the petition is bad for non-joinder of necessary parties?
3. Whether the respondents are liable to pay the compensation claimed? If so what amount they are liable to pay to the petitioner, by virtue of the said accident?
4. To what relief?

6. During the course of trial, on behalf of the petitioner, P.Ws.1 to 3 were examined and Exs.A.1 to A.6, Ex.X.1 were marked. On behalf of respondent No.2, no oral or documentary evidence was adduced.

7. On appraisal of 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.2,61,500/- directing respondent Nos.1 and 2 to pay the same jointly and severally with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

8. Feeling aggrieved by the judgment and award of the Tribunal, respondent No.2 – Insurance Company preferred the present appeal.

9. Heard Sri Kota Subba Rao, the learned counsel for respondent No.2, Sri K.Rathangapani Reddy, the learned counsel for the petitioner and Sri V.L.V.Kesava Rao, the learned counsel for respondent No.1.

10. The contention of the learned counsel for respondent No.2 is three fold: (1) When the petition is filed under Sections 163-A and 166 of the Act, the Tribunal has to treat the petition as one filed under Section 163-A of the Act only; (2) The Tribunal has committed an error while awarding compensation under the heads 'pain and suffering', 'disfigurement', and loss of expectation in life; and (3) The amount of compensation awarded by the Tribunal under various heads is highly excessive and exorbitant.

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11. Per contra, the learned counsel for the petitioner submitted that the Tribunal has rightly considered the material available on record and granted just and reasonable compensation. Hence, the appeal is liable to be dismissed.

12. Basing on the rival contentions, the points that arise for determination in this appeal are:

1. Whether the Tribunal has committed any error while treating the petition as one filed under Section 166 of the Act or not?
2. Whether the amount of compensation awarded is on higher side or not?

Point No.1:

13. Basing on the testimony of PWs.1 and 3 and Exs.A.1, A.3 and A.4, 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. The Tribunal has assigned cogent and valid reasons to its finding on issue No.1.

I am fully agreeing with the finding recorded by the Tribunal on issue No.1. Having regard to the facts and circumstances of the case, I am of the considered view that the accident occurred due to the rash and negligent driving of the driver of the lorry which resulted in injuries to the petitioner.

14. A careful perusal of the petition clearly indicates that the petitioner filed the petition under Sections 163-A and 166 of the Act. Establishment of rash and negligence on the part of the driver of the lorry is *sinequanon* to claim compensation

under Section 166 of the Act. If the petition is filed under Section 163-A of the Act, the petitioner need not plead and prove rash and negligence on the part of the driver of the crime vehicle. Section 163-A of the Act does not debar or prevent the Insurance Company to establish that there was no negligence on the part of the driver of the crime vehicle. In fact, both Sections 163-A and 166 of the Act are based on fault liability only. In the instant case, the petitioner categorically established that the accident occurred due to the rash and negligent driving of the driver of the lorry. The petitioner has satisfied the ingredients of Section 166 of the Act. The motor vehicle accident is a piece of beneficial legislation. The Tribunal or the Court has to interpret the provisions of the Act in such a manner to achieve the object for which the Act was enacted. When two views are possible basing on the material available on record, the view which is in favour of the petitioner has to be followed. Simply because the petitioner mentioned Sections 163-A and 166 of the Act that itself is not a valid ground to treat the petition as if it is filed under Section 163-A of the Act only. If the petition is filed under Section 163-A of the Act, the Tribunal has to award compensation basing on structured formula. If the petition is filed under Section 166 of the Act, the Tribunal can award just and reasonable compensation. If the petition is filed under Section 163-A of the Act and the Tribunal treats the same as one filed under Section 166 of the Act, there may be some justification or force in the submissions made by the learned counsel for respondent No.2. The Tribunal has not committed any illegality or irregularity. Keeping in mind the object of the Motor Vehicles Act, I am of the considered view that the Tribunal has rightly considered the petition as if it is filed under Section 166 of the Act. In the light of the foregoing discussion, I am unable to agree with the submission made by the learned counsel for respondent No.2 that the Tribunal ought to have treat the present petition as if it is filed under Section 163-A of the Act.

POINT No:2:

15. A perusal of the record reveals that the petitioner has taken the treatment in Government General Hospital, Kurnool for a period of 22 days. A perusal of the case sheet clearly reveals that the left hand of the petitioner was amputated. Due to amputation of the left hand, the petitioner might have suffered a lot. The Tribunal has awarded only Rs.25,000/- towards pain and suffering. Undoubtedly, amputation of the left hand certainly amounts to disfigurement. Taking that aspect, the Tribunal has

awarded an amount of Rs.25,000/- towards disfigurement. The contention of the learned counsel for respondent No.2 is that once the Tribunal awards compensation under the head 'pain and suffering', it has no right to award compensation under the head 'disfigurement'. As observed earlier, pain and suffering is one aspect and disfigurement is another aspect. Both are not one and the same as contended by the learned counsel for respondent No.2. Taking into consideration the age of the boy, the Tribunal has rightly awarded an amount of Rs.25,000/- towards disfigurement. Due to amputation, the petitioner may not enjoy his life like other persons. Unfortunately, the left hand of the boy was amputated. Keeping in mind the prospects of the boy, the Tribunal has rightly awarded an amount of Rs.25,000/- towards loss of amenities and happiness in life. Certainly, the amputation of left hand may to certain extent affect the life style and life span of the petitioner. Taking into consideration all these aspects, the Tribunal has rightly awarded an amount of Rs.25,000/- towards loss of expectation in life. Unfortunately, the Tribunal has awarded an amount of Rs.2,000/- towards medical expenses and Rs.2,000/- towards attendant charges. The petitioner has not filed any appeal or cross objections. Therefore, it is not fair on the part of this Court to enhance the compensation on these two grounds in the appeal filed by respondent No.2. Taking into consideration the age of the boy, the Tribunal has rightly awarded an amount of Rs.1,57,500/- towards loss of future earnings. In total, the Tribunal has awarded an amount of Rs.2,61,500/-. Viewed from any angle, the amount of compensation awarded by the Tribunal is not on higher side. On the other hand, the Tribunal has awarded just and reasonable compensation keeping in mind the future prospects of the young boy. In the light of the foregoing discussion, I am unable to accede to the contention of the learned counsel for respondent No.2 that the amount of compensation awarded by the Tribunal is on higher side.

16. The material available on record clearly reveals that respondent No.1 had not violated the terms and conditions of the policy so as to absolve the liability of respondent No.2. It is not the case of respondent No.2 that the lorry was not insured with it at the relevant point of time. The policy was in force as on the date of accident. Therefore, respondent No.2 has to indemnify the liability of respondent No.1. Hence, there are no grounds much less valid grounds to interfere with the well considered

judgment and award passed by the Tribunal and the appeal lacks merits and bonafides.

17. In the result, the Appeal is dismissed. There shall be no order as to costs.

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

T.SUNIL CHOWDARY, J

Date: 20.04.2015

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