

HON'BLE SMT JUSTICE ANIS

CIVIL MISCELLANEOUS APPEAL No.2719 of 2004

J U D G M E N T:

This appeal is filed by the appellant/petitioner under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the order, dated 30.06.1999, passed by the Chairman, Motor Vehicle Accident Claims Tribunal-cum-

I Additional District Judge, Cuddapah, in M.V.O.P.No.142 of 1997, awarding compensation of Rs.95,000/-.

2. The appellant/petitioner filed the above O.P under Section 166 of the Act, claiming compensation of Rs.1,50,000/- on account of the injuries received by him in a motor vehicle accident, that occurred on 28.09.1996.

3. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the Original Petition.

4. The brief averments made in the petition are that the petitioner is a driver by profession, and on 28.09.1996 at about 11:00 a.m, when the petitioner was taking his Auto to Cuddapah for repairs along with one Siva Sankar Reddy and Obul Reddy, at about 1:00 p.m, when the auto was proceeding near Duvvur Keerthirajupuram, one lorry bearing No.AHH.2934, driven by its driver with high speed in rash and negligent manner, came and dashed the auto from its back side. As a result of the accident, the auto turned turtle resulting injuries to the petitioner. Petitioner suffered fracture to his spinal cord in addition to other grievous injuries. Immediately after the accident, petitioner was admitted in Government Hospital, Proddatur. Later, he was shifted to NIMS Hospital, Hyderabad on 01.10.1996. Petitioner spent Rs.30,000/- towards medical expenses and Rs.7,000/- towards purchase of

medicines. In spite of the treatment, he is not able to work freely. The injuries resulted in permanent disability. Prior to the accident, the petitioner used to earn Rs.100/- per day by driving the auto and after accident, he is unable to move and his lower limbs were paralysed. Second respondent is the insurer and first respondent is the owner of the vehicle and they are jointly liable to pay compensation to the petitioner.

5. Before the Tribunal, the first respondent remained *ex parte*.

6. The brief averments made in the counter filed by the second respondent are as follows:

The second respondent put the petitioner to prove the manner of accident, age and income of the petitioner and stated that when the first respondent lorry was coming slowly towards Cuddapah at Keerthirajupuram and when the driver was overtaking the auto of the petitioner, the petitioner all of a sudden drove the auto from road margin to the main road and in that process, the accident occurred. There is no negligence on the part of the driver of the lorry. Further, the injuries sustained by the petitioner are simple and they have not resulted in any permanent disability. Further, the claim of the petitioner is high and excessive and prayed the Court to dismiss the petition.

7. Basing on the pleadings, the Tribunal framed three issues and to substantiate the claim, the petitioner got examined PWs.1 & 2 and got marked Exs.A1 to A5 on his behalf. On behalf of the contesting respondent, no oral or documentary evidence was adduced.

8. After considering the oral and documentary evidence, the

Tribunal awarded compensation of Rs.95,000/- along with interest at 12% p.a to the petitioner against both the respondents.

9. Being not satisfied with the compensation awarded by the Tribunal, the petitioner preferred the present appeal for enhancement of compensation.

10. The learned counsel appearing for the appellant/ petitioner argued that the Tribunal awarded meagre compensation inspite of sufficient evidence available on record; that the Tribunal also not considered the fact that the petitioner suffered permanent disability and thereby, he is not in a position to perform his normal duties; that the Tribunal ignored the expert's evidence available on record that the petitioner suffered disability of 30% and not granted any compensation under the said head, therefore prayed the Court to enhance the compensation.

11. On the other hand, the learned counsel for second respondent argued that Ex.A5 disability certificate is not issued by the competent Medical Board; that the Tribunal after considering the oral and documentary evidence, awarded just and reasonable compensation under all heads, therefore, the said finding of the Tribunal needs no interference and prayed the Court to dismiss the petition with costs.

12. Having regard to the submissions made by the learned counsel appearing for both parties, the points which are to be decided in this appeal are as follows:

1. Whether the appellant/petitioner is entitled for enhancement of compensation as prayed for or not?
2. Whether the compensation granted by the Tribunal is just and reasonable or not?

13. **POINTS 1 & 2:** A perusal of the oral and documentary evidence produced by the petitioner shows that there is no dispute of the fact that the accident occurred due to rash and negligent driving of the driver of the lorry bearing No.AHH.2934, due to which the petitioner sustained injuries.

14. There is also no dispute of the fact that the petitioner in the accident sustained grievous and simple injuries. PW.1 in his evidence stated about his receiving injuries and about the treatment taken by him in NIMS, Hospital, Hyderabad. PW.2, who is the Orthopaedic Surgeon, stated that he found deformity of spine following burst fracture of L1 and L2 Vertebra with stiffness of lower back. PW.2 opined that the petitioner suffered 30% disability and Ex.A5 is the disability certificate and Ex.A6 is the X-ray. There is no dispute of the fact that the petitioner is an auto driver by profession and aged about 21 years at the time of accident. After considering the grievous and simple injuries, the Tribunal rightly awarded Rs.60,000/- for the injuries and Rs.10,000/- towards pain and sufferings.

15. A perusal of the order passed by the Tribunal shows that the Tribunal gave a categorical finding that the petitioner while attended the Court to give evidence, walked normally and occupied his seat while entering into the witness box, as such the petitioner is not suffering with any disability. On the other hand, the learned counsel for the appellant argued that when expert evidence i.e., evidence of PW.2 and Ex.A5 disability certificate is available, the Tribunal ought to have granted compensation for disability suffered by the petitioner.

16. In the pleadings, the petitioner specifically pleaded that due to the injuries, he suffered partial permanent disability and his lower

limbs were paralysed due to the injury to the spinal cord. If that fact is taken into consideration, the finding of the Tribunal about observing the petitioner walking quite normally in the Court gives a sign that the petitioner is not suffering with any disability. But the fact remains that the petitioner must have suffering with some inconvenience as he received injuries to L1 and L2 Vertebra. Admittedly, the petitioner has not approached the Medical Board, situated in Government Hospital, Cuddapah and obtained the disability certificate. Even after treatment taken from PW.2, there is no further medical evidence produced. Therefore, the petitioner failed to prove that he is suffering with disability.

17. A perusal of the award passed by the Tribunal shows that no compensation was awarded to the petitioner under the head of extra nourishment and transportation charges. Therefore, I am of the view that an amount of Rs.5,000/- shall be awarded to the petitioner under this head. Thus, in total, the petitioner is entitled for Rs.1,00,000/- [Rs.95,000/- (already awarded) + Rs.5,000/-] as compensation.

18. Therefore, in view of the above discussion, the appeal is partly allowed enhancing the compensation awarded by the Tribunal to the appellant/petitioner from Rs.95,000/- to Rs.1,00,000/-. No order as to costs.

19. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

ANIS, J

Date: 20.01.2015

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