

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.3444 OF 2009

and

M.A.C.M.A.No.3662 OF 2012

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COMMON JUDGMENT:

M.A.C.M.A.No.3444 of 2009 is filed by the appellant/ petitioner and M.A.C.M.A.No.3662 of 2012 is filed by appellant/respondent No.2 challenging the judgment and award, dated 18.06.2009, passed in O.P.No.1092 of 2006 on the file of the XXII Additional Chief Judge-cum-Motor Accidents Claims Tribunal, City Criminal Court, Hyderabad (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 the date of accident, the petitioner along with others was proceeding towards Secunderabad from Bidar in a Maruthi Van bearing No.AP-10N-2722. When the maruthi van reached near Lakkaram Gate on N.H.No.9, the driver of the Eicher Van (for short, 'the crime vehicle') bearing No.AP-28U-7323 had driven the same in a rash and negligent manner and dashed against the maruthi van in which the petitioner was travelling. The accident occurred due to the rash and negligent driving of the driver of the crime vehicle against whom the Station House Officer, Patancheru Police Station registered a case in Crime No.100 of 2006 for the offence under Section 337 I.P.C. Due to accident, the petitioner sustained fractures and dislocation of left hip joint with fracture of acetabulum. The petitioner also sustained injuries on various parts of the body and took treatment as inpatient in Sigma Hospital, Secunderabad and spent huge amount towards medicines and treatment. Due to dislocation of the hip joint, the petitioner could not attend the Court for long time and thereby lost his income. By the time of accident, the petitioner was aged about 31 years and used to earn Rs.10,000/- per month as an Advocate. The crime vehicle, which belongs to respondent No.1, was insured with respondent No.2 – Insurance Company with effect from 16.11.2005 to 15.11.2006. Therefore, respondent Nos.1 and 2 are jointly and severally liable to pay compensation of

Rs.10,00,000/- to the petitioner.

4. In the order, it is mentioned that respondent No.1 has filed counter, in fact verification of the record reveals that respondent No.1 did not file counter before the Tribunal. Respondent No.2 filed counter denying all the averments made in the petition *inter alia* contending that the accident occurred due to the negligence of both vehicles' drivers. The petitioner is not entitled to claim compensation unless he establishes that the driver of the crime vehicle was having valid and effective driving licence as on the date of accident. Respondent No.1 has not informed the *factum* of accident to this respondent in collusion with the petitioner. 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 took place on 26.03.2006 at about 7.45 P.M. due to rash and negligent driving of Eicher van bearing No.AP 28U 7323, by it's driver.
2. Whether the petitioner is entitled to compensation. If so, to what amount and from whom.
3. To what relief.

6. During the course of trial, on behalf of the petitioner, P.Ws.1 to 5 were examined and Exs.A.1 to A.13 were marked. On behalf of respondent No.2, no oral evidence was adduced and Ex.B.1 – Insurance Policy was marked.

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 crime vehicle, which resulted in injuries to the petitioner and allowed the petition in part by awarding compensation of Rs.7,61,000/- directing respondent Nos.1 and 2 to pay the same jointly and severally with interest at the rate of 7% per annum from the date of petition till the date of deposit.

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

9. Heard Sri K.Jagathpal Reddy, the learned counsel for the petitioner and Sri A.Ramakrishna Reddy, the learned Standing Counsel for respondent No.2 – Oriental Insurance Company Limited.

10. The contention of the learned counsel for the petitioner is two fold: (1) The Tribunal discarded the disability certificate – Ex.A.10 even though the petitioner got examined PW.3, who issued the disability certificate, and (2) The Tribunal has not awarded just and reasonable compensation towards loss of future earnings of the petitioner.

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11. Per contra, the learned Standing Counsel for respondent No.2 submitted that the Tribunal having arrived at a conclusion that PW.3 is not a competent person to issue disability certificate – Ex.A.10, ought not to have awarded the compensation towards loss of future earnings of the petitioner and the Tribunal failed to consider that the accident occurred due to the negligence of both vehicles' drivers. He also submitted that the amount of compensation awarded by the Tribunal under various heads is highly excessive and exorbitant.

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

1. Whether there was any contributory negligence on the part of the driver of the Maruthi Van, if so, to what extent?
2. Whether the amount of compensation awarded by the Tribunal is just and reasonable or not?

Point No1:

13. In order to prove the negligence on the part of the driver of the crime vehicle, the petitioner himself was examined as PW.1 and got marked Exs.A.1 and A.2. As per the testimony of PW.1, on the date of accident, he and others were proceeding to Secunderabad from Bidar in a maruthi van. When they reached near Lakkaram Gate on N.H.No.9, the driver of the crime vehicle had driven the same in a rash and

negligent manner and hit the maruthi van from opposite direction. If the testimony of PW.1 is taken into consideration, the accident occurred due to the rash and negligent driving of the driver of the crime vehicle. Apart from PW.1, the driver of the crime vehicle or any other eye witness is a competent person to speak about the manner of the accident and the negligence, if any, on the part of the driver of the maruthi van. For one reason or other, respondent No.2 did not examine the driver of the crime vehicle or any other eye witness to the accident to prove the negligence or contributory negligence on the part of the driver of the maruthi van. If really the accident occurred due to the rash and negligent driving of the driver of the maruthi van, what prevented the driver of the crime vehicle to lodge a complaint against the driver of the maruthi van? This aspect also lends support to the version of the petitioner. Mere taking of the plea in the counter that the accident occurred due to the contributory negligence on the part of the driver of the maruthi van by itself would not amount to proof of the stand taken by respondent No.2. PW.1, being an injured witness, the possibility of distortion of the facts cannot be ruled out completely. In the cross-examination of PW.1, nothing is elicited to shake his testimony so far as the manner of the accident and negligence on the part of the driver of the crime vehicle is concerned. The oral testimony of PW.1 is supported by the recitals of Exs.A.1 – certified copy of F.I.R. and A.2 – certified copy of charge sheet. Absolutely, there is no material on record to establish the contributory negligence, if any, on the part of the driver of the maruthi van. The Tribunal has rightly considered the oral and documentary evidence adduced by both parties and arrived at a conclusion that the accident occurred due to the negligence on the part of the driver of the maruthi van. 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 crime vehicle, which resulted in injuries to the petitioner. Therefore, the stand of respondent No.2 that the accident occurred due to the contributory negligence on the part of the driver of the maruthi van has no legs to stand.

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POINT No.2:

14. As per the oral testimony of PW.1, he sustained fractures and replacement of hip joint. The testimony of PW.1 reveals that he took treatment in Sigma Hospital,

Secunderabad for replacement of the hip joint. Whatever deposed by PW.1 is supported by the oral testimony of PW.2 and documentary evidence - Exs.A.3 and A.4. Taking into consideration the nature of the fractures and injuries sustained by the petitioner, the Tribunal has rightly awarded an amount of Rs.25,000/- towards pain and suffering. Basing on Exs.A.4 to A.9, the Tribunal has rightly awarded an amount of Rs.66,774/- towards medicines and treatment. Due to fracture and other injuries, the petitioner may not enjoy his life like other persons. Taking into consideration this aspect, the Tribunal has awarded an amount of Rs.15,000/- towards loss of amenities. Immediately after the accident, the petitioner might have shifted to the hospital in some vehicle. The family members of the petitioner might have visited the hospital to look after the welfare of the petitioner. Taking into consideration all these aspects, the Tribunal awarded an amount of Rs.10,000/- towards transportation charges. Replacement of hip joint may cause agony and pain to the petitioner. Due to replacement of hip joint, the petitioner might not have attended to the Court for long time. The petitioner might have lost his income during the rest period. Therefore, the Tribunal has rightly awarded an amount of Rs.1,90,000/- towards loss of income during the treatment period. In case of replacement of hip joint, there is every possibility for replacement of the same in future also. Basing on the medical and other evidence available on record, the Tribunal in order to safeguard the interest of the petitioner awarded an amount of Rs.2,50,000/- towards hip replacement.

15. As per the testimony of PW.3, the petitioner incurred 80% disability. The testimony of PW.2 coupled with discharge summary clearly reveals that by the time of discharge, the petitioner was in a position to walk with some difficulty. In such circumstances, incurring of 80% disability is somewhat on higher side. If really the petitioner had incurred 80% disability, what prevented him to approach the Medical Board and obtain a disability certificate? For one reason or other, the petitioner did not choose to approach the Medical Board to obtain the disability certificate. A careful scanning of testimony of PW.3 clearly demonstrates that the petitioner did not take treatment under his supervision at any point of time. A perusal of the record reveals that the petitioner did not approach PW.2 for medical check up or for further treatment. It is a known fact that a doctor who treated the patient is competent to

issue the disability certificate. It is also a known fact that the Medical Board is competent to issue disability certificate. It is a settled principle of law that the functional disability cannot be equated with loss of earnings. Functional disability incurred by the petitioner is confined only to the hip joint and not to other parts of the body. The so-called 80% functional disability incurred by the petitioner cannot be equated with 80% of the loss of earnings. It seems that though the petitioner has not examined the concerned doctor, on humanitarian grounds, the Tribunal arrived at a conclusion that the functional disability incurred by the petitioner may affect the earning capacity of the petitioner to the extent of 20% and awarded an amount of Rs.2,04,000/-. Once the hip joint is replaced, it may not be possible for the petitioner to drive the vehicles for long distance. Viewed from that angle also, awarding of an amount of Rs.2,04,000/- is not on higher side. Taking into consideration the facts and circumstances of the case, I am unable to accede to the contention of the learned Standing Counsel for respondent No.2 that the amount of compensation awarded under various heads is on higher side. In the light of the foregoing discussion, I am of the considered view that there are no grounds much less valid grounds to interfere with the well considered judgment and award passed by the Tribunal.

16. In the result, both the Appeals are dismissed. There shall be no order as to costs.

17. Consequently, Miscellaneous Petitions, if any, pending in both the Appeals shall stand closed.

T.SUNIL CHOWDARY, J

Date: 17.04.2015

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