

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.149 of 2013

JUDGMENT:

1 This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 challenging the judgment and award dated 21.06.2004 passed in MVOP No.263 of 2004 on the file of Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Kurnool at Nandyal wherein and whereby an amount of Rs.95,182/- was awarded as compensation to the claimant as against the claim of Rs.1.20,000/-.

2 For the sake of convenience, parties to this appeal will hereinafter be referred as they are arrayed before the Tribunal.

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

4 On 31.03.2004 the petitioner and others were proceeding to Nandyal town from Chapirevula village in an auto bearing No.AP 21 W 484. When the auto reached near the fields of Ramasubbareddy, the driver of the auto drove the same in a rash and negligent manner and lost control over it due to which the auto turned turtle. The accident occurred due to the rash and negligent driving of the driver of the said auto against whom the Station House Officer, Nandyal Taluq registered a case in Cr.63 of 2004 for the offence punishable under Sections 337 and 338 of IPC. In the said accident, the petitioner sustained fracture to left femur and crush injury to right thigh. The petitioner took treatment as inpatient in Government General Hospital, Kurnool with effect from 31.03.2004 to 17.05.2004 and spent an amount of Rs.20,000/- towards medicines and treatment. By the date of

accident, the petitioner was aged about 18 years and used to earn Rs.3,000/- p.m. The auto bearing No.AP 21 W 484 which belongs to the first respondent was insured with the second respondent as on the date of accident and therefore, the respondent Nos.1 and 2 are liable to pay compensation to the petitioner jointly and severally.

5 The first respondent filed counter denying the various averments made in the petition including the manner of accident. It is further contended that he sold the auto bearing No.AP 21 W 484 to one Abdul Sharif on 10.10.2003 for a valuable consideration of Rs.1,10,500/- and handed over the vehicle to him. This respondent is not the owner of the vehicle as on the date of accident and hence there is no obligation on the part of this respondent to pay compensation to the petitioner, if any. Hence the petition may be dismissed as against this respondent.

6 Second respondent filed counter denying the various averments made in the petition including the manner of accident, age and income of the petitioner. The petitioner is not entitled to claim compensation unless it is established that the driver of the auto was having valid and effective driving licence to drive the auto as on the date of accident. The amount of compensation claimed by the petitioner is highly excessive and exorbitant. Hence the petition may be dismissed.

7 Basing on the above pleadings, the Tribunal framed the following issues for trial:

i. Whether there is rash and negligence on the part of driver of the auto bearing No.AP 21 W 484 in causing the accident?

ii. Whether the petitioner is entitled for compensation, If so, to what amount and from whom?

iii. To what relief?

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8 During the course of trial, on behalf of the petitioner, the petitioner himself was examined as P.W.1 and got marked Exs.A.1 to A.8 were marked. On behalf of the respondents R.W.1 was examined and copy of the insurance policy was marked as Ex.B.1.

9 On appreciation 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 auto bearing No.AP 21 W 484 which resulted injuries to the petitioner and allowed the petition in part by awarding compensation of Rs.95,182/- with interest at 7.5% p.a. form the date of filing of the petition till the date of deposit. Feeling aggrieved by the said judgment and award of the Tribunal, the second respondent – insurer preferred the present appeal.

10 The contention of the learned counsel for the second respondent is three fold. 1) The Tribunal ought not to have placed reliance on Ex.A.5 disability certificate without examining the doctor who issued the said certificate. She further submitted that the Tribunal committed error while awarding an amount of Rs.86,400/- towards loss of earnings. She further submitted that the findings recorded by the Tribunal are not sustainable either in law or on facts.

11 *Per contra*, the learned counsel for the petitioner submitted that the Tribunal can place reliance on the disability certificate issued by the Medical Board even if the doctor

concerned was not examined before the Tribunal. He further submitted that the Tribunal ought to have assessed the loss of earning capacity of the petitioner as 50% instead of 30%. He further submitted that the Tribunal awarded just and reasonable compensation and hence there are no grounds much less valid grounds to interfere with the judgment and award passed by the Tribunal.

12 Now the point that arises for determination in this appeal is:

“Whether the compensation awarded by the Tribunal is just and reasonable or not”

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Point:

13 As per the finding of the Tribunal, the accident occurred due to the rash and negligent driving of the driver of the auto bearing No.AP 21 W 484 which resulted injuries to the petitioner. The second respondent is also not seriously disputing the manner of accident. The oral testimony of PW.1 coupled with Exs.A.1 and A.2 clearly reveals that the accident occurred due to the rash and negligent driving of the driver of the auto bearing No.AP 21 W 484, which resulted injuries to the petitioner.

14 As per the testimony of P.W.1, due to the accident, he sustained fracture to left femur, crush injury on the right thigh and head injury. He took treatment in Government General Hospital, Kurnool from 31.03.2004 to 17.05.2004. In the cross-examination, P.W.1 denied the suggestion that he did not incur permanent disability. A perusal of Ex.A.2 wound certificate and Ex.A.7 discharge certificate clearly reveals that the petitioner sustained fracture to left femur and right thigh. As per Ex.A.5 disability certificate the petitioner sustained 30% disability due to

the fractures sustained by him. Admittedly, the petitioner took treatment as inpatient in Government General Hospital, Kurnool from 31.03.2004 to 17.05.2004. By marking Exs.A.2, A.5 and A.7, the petitioner clinchingly established that he sustained 30% functional disability.

15 Taking into consideration the age and other attending circumstances, the Tribunal arrived at a conclusion that the petitioner may earn Rs.18,000/- p.a. By the date of accident, the petitioner was aged 18 years. Therefore, the Tribunal has taken the multiplier as '16'. The Tribunal assessed the loss of future earning capacity of the petitioner at Rs.86,400/- (Rs.18,000/- X 16 X 30/100). The Tribunal awarded an amount of Rs.8,782/- towards medical expenses. Thus, the total compensation which the Tribunal awarded is Rs.95,182/-. Viewed from angle, the compensation awarded by the Tribunal is not on higher side.

16 As on the date of accident, the auto bearing No.AP 21 W 484 stands in the name of the first respondent. Absolutely there is no material available on record to show that the first respondent sold the auto to one Abdul Sharif. Therefore, the first respondent is vicariously liable to the wrongful acts done by his driver in course of employment. As on the date of the accident, the auto was validly insured with the second respondent under Ex.B.1 policy. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioner. The findings recorded by the Tribunal are supported by oral and documentary evidence available on record. There are no grounds much less valid grounds to interfere with the well considered judgement and award of the Tribunal. The appeal

lacks merits and bonafides.

17 In the result, the appeal is dismissed. No order as to costs. Consequently, miscellaneous petitions, if any, pending in this miscellaneous appeal, shall stand closed.

T. SUNIL CHOWDARY, J

Date: 3rd September, 2015

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