

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

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M.A.C.M.A.No.645 of 2009

JUDGMENT:

This appeal is filed by the appellant/petitioner assailing the judgment and award, dated 26.08.2006 passed in O.P.No.430 of 2004 on the file of the Principal Motor Accident Claims Tribunal (District Judge), Nellore (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 appeal, in brief, are as follows:

The petitioner filed the petition under Section 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs.1,50,000/- for the injuries sustained in a road accident that occurred on 19.01.2004. The case of the petitioner is that on 19.01.2004 at about 8:15 PM, he boarded a jeep bearing No.A.P.04/C-2151 at Nandipadu to go to Nellore. When the jeep reached Peramana Cross road, the driver had driven the same in a rash and negligent manner and dashed against the lorry bearing No.A.P.21/U-4113. Due to the accident, the petitioner sustained fracture to lower jaw and upper jaw, and lost teeth. The petitioner took treatment in Narayana Dental Hospital for about three weeks. The petitioner took treatment in different hospitals due to injury to his ear also. The Station House Officer, Sangam Police Station registered a case in Crime No.5 of 2004 under Section 337 I.P.C. against the driver of the jeep. The jeep was insured with the second respondent – Company and the policy was in force as on the date of accident. Therefore respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioner.

4. The first respondent filed counter *inter alia* contending that there was no rashness or negligence on the part of the driver of the jeep.

The jeep was insured with the second respondent – Company. Therefore, the second respondent is liable to pay compensation, if any, to the petitioner.

5. The second respondent filed counter denying the material averments *inter alia* contending that there was no rashness or negligence on the part of the driver of the jeep. Therefore, this respondent is not liable to pay compensation to the petitioner. Hence, the petition may be dismissed.

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

1. Whether the accident in question is occurred, if so, was it due to the fault of the driver of Jeep bearing registration No.A.P.04/C-2151 or driver of lorry bearing registration No.A.P.21/U-4113?
2. Whether the owner of the aforementioned lorry and its insurance company are necessary parties to the proceedings?
3. Whether the driver of the aforementioned jeep was having valid and effective driving licence as on the date of accident?
4. Whether the claimant is entitled to the compensation, if so, to what amount and from which of the respondents?
5. To what relief?

7. During the course of trial, on behalf of the petitioner, PWs.1 to 5 were examined and Exs.A.1 to A.15 were marked. On behalf of the respondents, RW.1 was examined and Ex.B.1 was marked.

8. Basing on the material available on record, the Tribunal partly allowed the petition by granting compensation of Rs.30,000/-.

9. Feeling aggrieved by the judgment and award of the Tribunal, the petitioner/claimant preferred the present appeal.

10. Sri T.V.Suman, representing Sri M.Venkata Narayana, the learned counsel for the appellant/petitioner, submitted that the compensation awarded by the Tribunal is not just and reasonable. He further submitted that the Tribunal discarded the oral testimony of PWs.3 to 5 and documentary evidence on erroneous grounds.

11. Per contra, Sri P.Gopal Das, the learned counsel for the first respondent, submitted that the Tribunal awarded just and reasonable compensation to the petitioner. He further submitted that the petitioner is not entitled to claim any amount under the head of permanent disability.

12. Now the point that falls for consideration in this appeal is:

Whether the amount of compensation awarded by the Tribunal is just and reasonable or not?

13. **Point:**

Basing on the oral and documentary evidence, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the jeep and there was no negligence on the part of the driver of the lorry. For one reason or other, the second respondent did not file an appeal or cross-objections challenging the finding of the Tribunal so far as the *factum and* manner of the accident are concerned. The finding recorded by the Tribunal so far as the *factum and* manner of the accident became final. Hence, there is no necessity to reconsider this point in the appeal. Having regard to the facts and circumstances of the case, I am of the considered view that the accident occurred due to rash and negligent driving of the driver of the jeep. A perusal of the record reveals that the Tribunal awarded the compensation under the following heads:

Pain and suffering	Rs.15,000/-
Medical expenses	Rs.15,000/-

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Total: Rs.30,000/-
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14. The oral testimony of PWs.1 to 5 coupled with Exs.A.2, A.5, A.6, A.9, A.10, A.13 and A.15 clearly reveals that the petitioner took treatment in different hospitals from 28.01.2004 to 12.02.2004 and from 27.03.2004 to 30.03.2004. A perusal of the case sheet further reveals that the petitioner lost front four teeth. The oral testimony of PW.1 is fully supported by the oral testimony of PWs.3 to 5 so far as the nature of the injuries and duration of the treatment taken by the petitioner. Due to two fractures and loss of four teeth, the petitioner might have suffered a lot. Taking into consideration the nature of the fractures sustained by the petitioner, I am inclined to award an amount of Rs.25,000/- towards pain and suffering.

15. Basing on the medical bills produced by the petitioner, the Tribunal awarded an amount of Rs.15,000/- towards medical expenses. The petitioner has to undergo further treatment for fixation of the four teeth. This aspect was not considered by the Tribunal. The petitioner has to spend some amount for fixation of the four teeth. Hence, I am inclined to award an amount of Rs.30,000/- towards future treatment as well as for fixation of artificial teeth. Due to fracture and injuries, the petitioner might not have attended his regular work at least for a period of one month. Hence, I am inclined to award an amount of Rs.7,000/- towards loss of earnings. I am also inclined to award an amount of Rs.3,000/- towards extra nourishment.

16. Unfortunately, the petitioner has not taken any steps to produce the disability certificate issued by the competent authority. In the absence of the disability certificate, it may not be possible for this Court to award any amount under the head of loss of future earnings.

Thus, in all, the amount of compensation to which the petitioner is entitled under various heads is as follows:

Pain and suffering	Rs.25,000/-
Medical expenses	Rs.15,000/-
Future treatment as well as for fixation of artificial teeth	Rs.30,000/-
Loss of earnings	Rs. 7,000/-
Extra nourishment	Rs. 3,000/-
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Total:	Rs.80,000/-
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17. Therefore, I am of the considered view that the compensation awarded under various heads is just and reasonable to meet the ends of justice. The first respondent being the owner of the jeep is vicariously liable for the wrongful acts done by his driver during the course of employment. Ex.B.1 was also in force as on the date of accident. Therefore, the second respondent has to indemnify the liability of the first respondent. Therefore, respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioner.

18. In the result, the Appeal is allowed in part enhancing the quantum of compensation from Rs.30,000/- to Rs.80,000/- with interest at the rate of 7.5% from the date of petition till the date of realisation. The respondents are hereby directed to deposit the amount within two (2) months from the date of receipt of a copy of this judgment. On such deposit, the petitioner is entitled to withdraw the same. There shall be no order as to costs.

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

T.SUNIL CHOWDARY, J

22nd January, 2015
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