THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY
M.A.C.M.A. No.715 of 2009

JUDGMENT:

1 Feeling aggrieved by the judgment and award dated 18.08.2006 passed in M.V.O.P.No.31 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District & Sessions Judge, Vizianagaram wherein and whereby an amount of Rs.65,760/- was awarded as compensation by fastening the liability on the owner of the crime vehicle, the claimant filed the present appeal.

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 28.11.2002 at about 2.30 hours, the petitioner was travelling in the lorry bearing No.AIV 2489 as a labourer for loading and unloading of sand. At that time, the first respondent was driving the said lorry and when the lorry reached near Chintala Cheruvu Gedda, the first respondent drove the same in a rash and negligent manner, due to which, the lorry turned turtle. The accident occurred due to the rash and negligent driving of the first respondent. In connection with the said accident, the Station House Officer, Denkada Police Station registered a case in Cr.No.132 of 2002 against the first respondent for the offences punishable under Sections 337 and 338 of IPC. In the said accident, the petitioner sustained multiple grievous injuries all over the body and took treatment as inpatient in Government hospital, Vizianagaram. The petitioner spent huge amount towards medicines and treatment. By the date of accident, the petitioner was hale and healthy and was earning Rs.200/- per day by attending cooli work. Due to the injuries,

the petitioner could not attend his work for a long time and thereby lost his income. The petitioner sustained disability also due to the injuries sustained by him in the accident. Therefore, the petitioner filed the petition claiming compensation of Rs.1.00 lack from the respondents. By the date of accident, the lorry bearing No.AIV 2489 was insured with the second respondent and hence the respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioner.

5 First respondent filed counter denying the material averments inter *alia* contending that in order to avoid a major accident, he severed the vehicle to left side and in that process the petitioner sustained injuries. He was having valid and effective driving licence to drive the vehicle at the time of accident. The crime vehicle was insured with the second respondent with effect from 08.11.2002 to 07.11.2003 and hence the second respondent alone is liable to pay compensation to the petitioner. He further submitted that at the time of accident, the petitioner was working as labourer in the said lorry for loading and unloading purpose.

6 The second respondent filed counter denying the material averments made in the petition inter *alia* contending that the first respondent did not inform to the second respondent about the factum of accident. The petitioner travelled in the crime vehicle as an unauthorised passenger but not as a labourer and thereby the first respondent violated the terms and conditions of the policy. The petitioner does not come within the definition of labourer. Therefore, first respondent alone is liable to pay compensation, if any, to the petitioner. The amount of compensation claimed by the petitioner under various heads is 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 the accident occurred due to the rash and negligent driving by the driver of lorry bearing No.AIV 2489?

ii. Whether the petitioner is entitled for any compensation?

iii. Whether the respondents are liable to pay any compensation?

iv. To what relief?

8 During the course of trial, on behalf of the petitioner P.Ws.1 and 2 were examined and Exs.A.1 to A.8 and Exs.X.1 to X.3 were marked. On behalf of the second respondent R.W.1 was examined and Ex.B.1 was marked.

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 lorry bearing No.AIV 2489 i.e. first respondent and allowed the petition in part by awarding compensation of Rs.65,760/- with interest at 7% p.a from the date of filing of the petition till the date of realisation by fastening the liability only on the owner of the crime vehicle i.e. first respondent. Feeling aggrieved by the said finding of the Tribunal in fastening the liability on the first respondent alone, the petitioner filed the present appeal.

10 The contention of the learned counsel for the petitioner Sri Venkateswara Rao Gudapati is two fold. 1) The Finding of the Tribunal that Ex.B.1 policy does not cover the risk of coolies is contrary to the recitals of Ex.B.1. 2) The Tribunal has not determined the compensation in accordance with law.

11 *Per* contra, Sri K. Sitaram, the learned counsel for the second respondent submitted that basing on the material available on

record, the Tribunal has rightly held that Ex.B.1 policy does not cover the risk of labourer and hence there are no valid grounds to interfere with the said finding of the Tribunal in this appeal.

12 Now the points that fall for consideration in this appeal are:

> **1. Whether the Tribunal has awarded just and reasonable compensation or not?**
>
> **2. Whether Ex.B.1 policy covers the risk of coolies or not?**

Point No.1:

13 As per the finding of the tribunal, the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.AIV 2489 which resulted injuries to the petitioner. The second respondent did not choose to file appeal or cross objections challenging the finding of the Tribunal on issue No.1. Therefore, the finding of the Tribunal on issue No.1 has become final. I am fully agreeing with the finding of the Tribunal that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.AIV 2489 which resulted injuries to the petitioner.

14 There is no much dispute with regard to the nature of the injuries sustained by the petitioner. The fact remains that the petitioner sustained fracture to left shoulder and four other simple injuries. Taking into consideration the nature of injuries sustained by the petitioner, the Tribunal rightly awarded Rs.9,000/- towards pain and suffering. The petitioner filed medical bills Ex.A.4 and A.5 worth of Rs.5,760/-. The Tribunal accepted the medical bills and awarded an amount of Rs.55,760/- towards medicines.

15 In view of the material available on record, the Tribunal arrived at a conclusion that the petitioner used to earn Rs.18,000/- p.a out of which the Tribunal deducted 1/3rd towards personal

expenses of the petitioner. The Tribunal wrongly deducted 1/3rd towards personal expenses of the petitioner since there is no provision for such deduction towards personal expenses of the injured while computing loss of earnings.

16 By the date of accident, the petitioner was aged about 25 years. The Tribunal applied multiplier 17. As per the ratio in ***Sarla Verma Vs. Delhi Transport Corporation***[1]**,** the appropriate multiplier, for age group of 15 to 25 years, is 18. In view of the evidence of P.W.2 coupled with Ex.A.7 disability certificate, the Tribunal arrived at a conclusion that the petitioner sustained 25% disability. The Tribunal also arrived at a conclusion that the loss of future earnings of the petitioner is 25%. Since the income of the petitioner was fixed at Rs.18,000/- p.a, the loss of future earnings of the petitioner would come to Rs.4,500/- X 18 = Rs.81,000/-.

17 Thus, the compensation under different heads, which the petitioner is entitled to, would come as under:

Loss of future earnings:	Rs.81,000/-
Pain and suffering:	Rs. 9,000/-
Purchase of medicines:	Rs. 5,760/-

TOTAL	Rs.95,760/-
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18 In view of the above discussion, I am of the considered view that the Tribunal has not rightly determined the loss of future earnings of the petitioner. Therefore, the petitioner is entitled to a total compensation of Rs.95,760/-.

POINT OF No.2:

19 As per the testimony of P.W.1, at the time of accident, he

was travelling in the lorry as a labourer. As per the testimony of R.W.1 at the time of accident, the petitioner was travelling in the lorry as an unauthorised passenger. The crucial question to be determined at this juncture is whether the petitioner was travelling in the offending lorry as labourer or as an unauthorised person?

20 The first respondent filed counter admitting that at the time of accident, the petitioner was travelling in the lorry as a labourer for loading and unloading of sand. As per the recitals of Exs.A.1 and A.2, at the time of accident the petitioner was travelling in the lorry as a labourer. In Para No.10 of the judgment under appeal also the Tribunal made an observation that by the time of accident, the petitioner was travelling in the offending lorry as a labourer. But the Tribunal absolved the liability of the second respondent on the ground that Ex.B.1 policy does not cover the risk of coolies.

21 I have carefully perused the Ex.B.1 policy, as per which, the first respondent paid an amount of Rs.100/- covering the risk of owner and driver. The insured also paid an amount of Rs.50/- covering the risk of two workmen under the Workmen Compensation Act, 1923. The finding of the Tribunal that Ex.B.1 policy does not cover the risk of coolies is contrary to the recitals of Ex.B.1 policy. Had the Tribunal has evinced any interest to verify the recitals of Ex.B.1, the finding would have been otherwise. The finding of the Tribunal that Ex.B.1 does not cover the risk of labourers or workmen is not sustainable viewed from any angle.

21 As observed earlier, the petitioner was travelling in the crime vehicle as a labourer for loading and unloading of sand. Therefore, he will certainly fall within the definition of workman as defined under the Workmen's Compensation Act. Ex.B.1 policy covers the risk of two workmen. The first respondent has not violated the terms and

conditions of the policy so as to absolve the liability of the second respondent – insurance company. In view of the recitals of Ex.B.1 policy, the second respondent has to indemnify the liability of the first respondent. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioner. There are grounds much less valid grounds to interfere with the judgment and award of the Tribunal. In that view of the matter, the finding of the Tribunal that the first respondent alone has to pay compensation to the petitioner is hereby set aside.

22 In the result, the appeal is allowed in part enhancing the amount of compensation awarded by the Tribunal from Rs.65,760/- to Rs.95,760/- with interest at 7% p.a. from the date of filing of the petition till date of realisation. The respondent Nos.1 and 2 are herby directed jointly and severally to deposit the amount of compensation within the one month from the date of receipt of a copy of this judgment. Parties are directed to bear their own costs in this appeal. Consequently, miscellaneous petitions, if any, pending in this miscellaneous appeal shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 4th March, 2015.

Kvsn

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[1] 2009 ACJ 1298 (SC)