

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

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M.A.C.M.A.No.721 of 2009

JUDGMENT:

This appeal is filed by the appellant/petitioner assailing the judgment and award, dated 22.09.2005 passed in O.P.No.10 of 2002 on the file of the Motor Accident Claims Tribunal (Fast Track Court), Nizamabad at Kamareddy (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 the road accident that occurred on 13.05.2001. On 13.05.2001 at about 7:30 PM, when the petitioner reached Panchamuki Hanuman Temple by walk, the driver of the tractor bearing No.AP-I-2538 had driven the same in a rash and negligent manner and dashed against the petitioner. Due to the accident, the petitioner sustained fracture and multiple injuries on various parts of the body. The petitioner took treatment in Government Hospital, kamareddy and Gandhi Hospital, Secunderabad. The petitioner spent an amount of Rs.1,00,000/- towards medicines and extra nourishment. At the time of accident, the petitioner was earning Rs.6,000/- to 8,000/- per month as vegetable vendor. Due to injuries, she could not attend the work, thereby, lost her income. Hence, the petition.

4. The first respondent remained *ex-parte*. The second respondent filed counter denying the material averments made in the petition *inter alia* contending that there was no rashness or negligence on the part of the driver of the tractor and the accident occurred due to rash and negligent act of the petitioner. The amount of compensation claimed

by the petitioner under various heads is highly excessive and exorbitant. Therefore, the second respondent is not liable to pay compensation to the petitioner. Hence, the petition is liable to be dismissed.

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

1. Whether the accident has taken place due to rash and negligent driving of the vehicle bearing No.AP-I-2538 by its driver?
2. Whether the petitioner is entitled for compensation. If so, to what just amount and against whom?
3. To what relief?

6. During the course of trial, on behalf of the petitioner, PW.1 was examined and Exs.A.1 to A.11 were marked. On behalf of the respondents, no oral evidence was adduced and Ex.B.1 was marked.

7. Basing on the material available on record, the Tribunal partly allowed the petition by granting compensation of Rs.8,870/-.

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

9. Sri B.Srinivasa Rao, the learned counsel for the appellant, submitted that the Tribunal has not properly considered the material available on record and granted meagre amount. He further submitted that the finding recorded by the Tribunal is not sustainable.

10. Per contra, Sri Sriraman, the learned Standing Counsel for New India Assurance Company Limited appearing for the second respondent, submitted that the petitioner sustained simple injuries. He further submitted that the compensation awarded by the Tribunal is just and reasonable.

11. Now the point for consideration is whether the Tribunal has

awarded just and reasonable compensation to the petitioner or not?

12. As per the finding of the Tribunal, the accident occurred due to rash and negligent driving of the driver of the tractor bearing No. AP-I-2538. The second respondent – Insurance Company did not choose to file an appeal challenging the finding of the Tribunal. The finding recorded by the Tribunal has attained finality. Basing on the material available on record, I am of the considered view that the accident occurred due to rash and negligent driving of the driver of the tractor bearing No.AP-I-2538. The oral testimony of PW.1 (claimant) coupled with Ex.A.3, Wound Certificate, clearly reveals that the petitioner sustained one simple injury on the head. The Tribunal granted an amount of Rs.6,000/- under the head of pain and suffering. Due to head injury, the petitioner might have suffered a lot.

13. Taking into consideration the nature of the injury and the duration of the treatment taken by the petitioner, I am inclined to grant an amount of Rs.8,000/- towards pain and suffering. The Tribunal granted an amount of Rs.2,500/- towards C.T.Scan and Rs.370/- towards medicines. The Tribunal granted the compensation basing on the C.T.Scan report and medical bills produced by the petitioner. The Tribunal rightly considered the material available on record and granted the compensation. Due to head injury, the petitioner might not have attended to her work for a period of one month. The Tribunal has not granted any amount towards loss of earnings. Hence, I am inclined to award an amount of Rs.3,000/- towards loss of earnings. I am also inclined to award an amount of Rs.1,000/- towards extra nourishment. The compensation awarded under various heads is as follows:

Pain and suffering	----	Rs.8,000/-
C.T.Scan	----	Rs.2,500/-
Medical bills	-----	Rs. 370/-
Loss of earnings	-----	Rs.3,000/-

Extra nourishment ----- Rs.1,000/-

Total compensation amount: Rs.14,870 /-

14. Therefore, I am of the considered view that the compensation awarded under various heads is just and reasonable to meet the ends of justice. It is not in dispute that the crime vehicle was insured with the second respondent – Company under Ex.B.1 Policy and the same was in force. The second respondent has to indemnify the liability of the first respondent, who is the owner of the tractor. Hence, respondent Nos.1 and 2 are jointly and severally liable to pay the compensation to the petitioner.

15. In the result, the Appeal is allowed in part enhancing the quantum of compensation from Rs.8,870/- to Rs.14,870/- with interest at the rate of 7.5% from the date of petition till the date of realisation. There shall be no order as to costs.

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

T.SUNIL CHOWDARY, J

21st January, 2015

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