

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.766 OF 2009

JUDGMENT:

This appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 by the appellant/respondent No.2 challenging the judgment and award, dated 27.07.2006, passed in O.P.No.682 of 1999 on the file of the Motor Accidents Claims Tribunal-cum-

V Additional District and Sessions Judge, Mahabubnagar (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 22.05.1999, at about 7:00 PM, Mohammed Abdul Razzak was crossing the road near Menaka Talkies, Mahabubnagar, In the meanwhile, the driver of the auto rickshaw bearing

No.AP-22/T-7613 came from Raichur side in a rash and negligent manner and hit Razzak. The accident occurred due to the rash and negligent driving of the driver of the auto rickshaw against whom the Station House Officer, Mahabubnagar I-Town Police Station registered a case in Crime No.66 of 1999 for the offence under Section 338 I.P.C. Due to the accident, Razzak sustained fractures and bleeding injuries on various parts of the body and took treatment for long time. Razzak (hereinafter referred to as 'the deceased') succumbed to injuries on 12.07.1999. By the time of the accident, the deceased was aged about 65 years and used to earn Rs.1,500/- per month. The auto rickshaw bearing

No.AP-22/T-7613, which belongs to respondent No.1, was insured with respondent No.2 – Insurance Company with effect from 22.01.1999 to 21.01.2000. Therefore, respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.75,000/- to the petitioner.

4. Respondent No.1 remained *ex-parte*. Respondent No.2 filed counter denying all the averments made in the petition *inter alia* contending that the accident occurred due to the negligent act of the deceased and there was no negligence on the part of the driver of the auto and that the driver of the auto was not having valid and

effective driving licence as on the date of accident. Therefore, there is no obligation on the part of this respondent to indemnify the liability of respondent No.1. 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 there occurred an accident on 22.05.1999 at about 7-00 P.M., near Menaka Talkies due to rash and negligent driving of Auto rickshaw bearing No.AP-22/T-7613 by it's driver, and whether it resulted in causing the death of M.A.Razzak?
2. Whether the petitioners are entitled to receive any compensation from the respondents? If so, at what rate and from whom?
3. To what relief?

6. During the course of trial, on behalf of the petitioner, P.W.1 was examined and Exs.A.1 to A.8 were marked. On behalf of respondent No.2, RW.1 was examined and Exs.B.1 to B.4 were marked.

7. Basing on 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, which resulted in injuries to the deceased, and allowed the petition in part by awarding compensation of Rs.74,500/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

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

9. Heard Smt. A.Jayanthi, the learned counsel for respondent No.2, and Smt. N.Sameena, the learned counsel for the petitioner.

10. The contention of the learned counsel for respondent No.2 is two fold: (1) The quantum of compensation awarded by the Tribunal under various heads is highly excessive and exorbitant, and (2) The Tribunal committed error while fastening the liability on respondent No.2 even though the driver of the auto was not having valid and effective driving licence as on the date of accident.

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11. Per contra, the learned counsel for the petitioner submitted that basing on the

material available on record, the Tribunal awarded just and reasonable compensation. She further submitted that there are no grounds much less valid grounds to set aside the judgment and award of the Tribunal.

12. Now the points that arise for determination in this appeal are:

1. Whether the Tribunal has awarded just and reasonable compensation or not?
2. Whether respondent No.1 had violated the terms and conditions of policy so as to absolve the liability of respondent No.2 or not?

Point No1:

13. Basing on the oral testimony of PW.1 and Exs.A.1, A.3 and A.4, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the auto, which resulted in injuries to the deceased. RW.1 is not an eye witness to the accident. The testimony of RW.1 is no way helpful to respondent No.2 to substantiate its case. The Tribunal has assigned cogent and valid reasons to its finding 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 auto, which resulted in injuries to the deceased.

14. A perusal of the record reveals that the deceased died at his residence. The fact remains that the deceased had taken the treatment in Government General Hospital, Mahabubnagar. Ex.A.7 is no way helpful to the petitioner to establish that the deceased died due to injuries sustained in the accident. In the absence of postmortem certificate, it is not possible for the Tribunal to arrive at a conclusion whether the deceased died due to injuries sustained in the road accident that occurred on 22.05.1999 or not. The Tribunal arrived at a conclusion that there was no nexus to the injuries sustained by the deceased and cause of the death. As per the testimony of PW.1, the deceased sustained fractures on various parts of the body. A perusal of Ex.A.2 reveals that the deceased sustained injuries to right occipital area, right ear, right thigh, left knee joint, fracture of 5th and 6th ribs and fracture of femur. The Tribunal lost sight of one aspect i.e., as per Ex.A.2, the deceased sustained an injury on left hip joint, which is grievous in nature. It appears

that the Tribunal has not verified Ex.A.2 – Certified Copy of Wound Certificate.

15. The learned counsel for the petitioner has drawn my attention to **Reliance General Insurance Co.Ltd., Secunderabad v. B.Mallaiah (died) by LRs. and another**

16. As per the principle enunciated in the case cited supra, the Tribunal can award compensation under different heads. The claim petition is maintainable even if the injured died.

17. By the date of accident, the deceased was aged about 65 years. He might have suffered a lot due to the fractures on various parts of the body more particularly on the hip joint. The accident occurred on 22.05.1999 and the deceased died on 12.07.1999. The fact remains that the deceased died within two months from the date of the accident. The possibility of death of the deceased due to the injuries sustained by him in the accident cannot be ruled out completely. Unfortunately, the petitioner has not adduced any evidence to establish that the deceased died due to the injuries sustained by him in the accident. As seen from the wound certificate, the deceased sustained fractures to ribs as well as hip joint, which are vital parts of a human being. In view of the peculiar facts and circumstances of the case and in view of the age of the deceased, I am inclined to award an amount of Rs.50,000/- for the injuries sustained by him.

18. It is a known fact that patients have to spend some amount even though they took treatment in Government hospital. It is a known fact that in case of fractures, the doctors may advise the patients to take scanning or X-ray films from outside the hospital. It is needless to say that such type of instruments may not be available in Government hospitals. Invariably, the patients have to approach private clinics for taking X-Rays and other clinical examinations. Admittedly, the deceased sustained three fractures. Hence, this Court is inclined to award an amount of Rs.10,000/- towards medicines, treatment and investigations.

19. The Tribunal has not awarded any amount towards extra nourishment and transportation charges. Hence, I am inclined to award an amount of Rs.5,000/- towards extra nourishment and transportation charges.

20. The amount of compensation to which the petitioner is entitled to under various heads is as follows:

Injuries: Rs.50,000/-

Medicines and treatment: Rs.10,000/-

Extra nourishment and

Transportation charges: Rs. 5,000/-

TOTAL: Rs.65,000/-

21. The Tribunal, without considering all these aspects, has awarded an amount of Rs.74,500/- for the injuries sustained by the deceased, which is not permissible. The Tribunal awarded the said amount without assigning cogent and valid reasons.

22. In the light of the foregoing discussion, this Court is of the considered view that the petitioner is entitled to Rs.65,000/- only instead of Rs.74,500/-.

Point No.2:

23. Absolutely, there is no material on record to show that respondent No.1 has violated the terms and conditions of the policy in order to absolve the liability of respondent No.2. Therefore, respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioner.

24. In the result, the Appeal is allowed in part reducing the quantum of compensation from Rs.74,500/- to Rs.65,000/- directing respondent Nos.1 and 2 to deposit the same with interest at 7.5% per annum from the date of petition till the date of deposit. No order as to costs. As a sequel, miscellaneous petitions pending in this appeal, if any, shall stand closed.

T.SUNIL CHOWDARY, J

Date: 22nd April, 2015.

Ivd / Kvsn

