

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.3105 OF 2009

JUDGMENT:

1 This appeal is filed under Section 173 of M.V. Act, assailing the judgment and award dated 01.07.2008 passed in M.V.O.P.No.47 of 2007 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Court, Kadapa.

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 19.01.2005 at about 1.00 p.m, one B.Swetha D/o B. Kadiraiiah (hereinafter referred to as 'the petitioner') was proceeding towards a shop in Boyanapalli. In the meanwhile, a Jeep bearing No.AP – 04 – U – 4688 came from Kadapa side came in a rash and negligent manner and dashed the petitioner. The accident occurred due to the rash and negligent driving of the driver of the Jeep, against whom the Station House Officer, Mannur Police Station registered a case in Cr.No.8 of 2005 under section 337 and 338 IPC. Due to the accident, the petitioner sustained injuries on various parts of her body and took treatment as inpatient in SVRR hospital, Tirupati and underwent operation. The parents of the petitioner spent huge amounts towards medicines and treatment. By the date of accident the petitioner was aged about 8 years. The Jeep bearing No.AP – 04 – U – 4688 which belongs to the first respondent was insured with the second respondent as on the date of accident. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.1.00 lakh to the petitioner.

5 First respondent remained ex parte. Second respondent filed counter denying the material averments made in the petition *inter alia* contending that the accident occurred due to the rash and negligent act on the part of the petitioner in crossing the road and that there was no rash or negligence on the part of the driver of the Jeep. The amount of compensation claimed by the petitioner under various heads is highly excessive and exorbitant. There is no obligation on the part of this respondent to indemnify the liability of the first respondent unless

the petitioner establishes that the driver of the Jeep bearing No.AP – 04 – U – 4688 was having valid and effective driving licence as on the date of accident. Hence the petition may be dismissed against this respondent.

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

- i. Whether the petitioner received injuries in a motor vehicle accident that occurred on 19-1-2005 at 1.00 p.m. due to rash and negligent driving by the driver of Jeep bearing No.AP – 04 – U – 4688?
- ii. Whether the petitioner is entitled for compensation, if so, to what amount and from whom?
- iii. To what relief?

7 During the course of trial, on behalf of the petitioner P.Ws.1 and 2 were examined and Exs.A.1 to A.5 were marked. On behalf of the respondents, no oral or documentary evidence was let in.

8 Having appreciated the material available on record, the Tribunal arrived at a conclusion that the accident occurred due to rash and negligent driving of the driver of the Jeep bearing No.AP – 04 – U – 4688, which resulted injuries to the petitioner and allowed the petition in part by awarding compensation of Rs.11,000/-, directing the respondent Nos.1 and 2 to pay the same jointly and severally with interest at 6% p.a. from the date of filing of the petition till the date of deposit. Being dissatisfied with the said amount of compensation, the claimant filed the present appeal.

9 Heard Sri V. Eswaraiah Chowdary, the learned counsel for the petitioner and Sri S. Daivabhimanam the learned standing counsel ounsel for the second respondent.

10 The contention of the learned counsel for the petitioner is three fold.

- i. The Tribunal has not awarded any amount under the head medicines and extra nourishment.
- ii. The Tribunal has not placed any reliance on Ex.A.5 disability certificate.
- iii. The amount of compensation awarded by the Tribunal under various heads is too meagre.

11 *Per contra*, the learned counsel for the second respondent submitted that

the Tribunal has rightly considered the material available on record and awarded just and reasonable compensation.

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

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

Point:

13 The finding of the Tribunal that the accident occurred due to the rash and negligent driving by the driver of the Jeep bearing No.AP – 04 – U – 4688 has become final in view of non-filing of the appeal or cross-objections by the respondent Nos.1 and 2. I am fully agreeing with the finding recorded by the Tribunal 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 Jeep bearing No.AP – 04 – U – 4688, which resulted injuries to the petitioner.

14 The oral testimony of P.Ws.1 and 2 coupled with Ex.A.2 - wound certificate reveals that the petitioner sustained one fracture and three simple injuries. Due to fracture and injuries, the petitioner might have suffered a lot. Taking into consideration the age of the petitioner, I am inclined to award an amount of Rs.18,000/- towards pain and suffering. I am also inclined to award an amount of Rs.2,000/- towards extra nourishment and Rs.1,000/- towards incidental expenses. Though the petitioner has taken treatment in Government hospital, the father of the petitioner might have spent some amount towards medicines. Hence I am inclined to award an amount of Rs.3,000/- towards medicines and treatment.

15 As per the recitals of Ex.A.5 disability certificate, the petitioner incurred 30% disability. The petitioner has not chosen to examine the doctor who issued Ex.A.5 disability certificate. The Tribunal rightly discarded Ex.A.5 for non-examination of the doctor who issued the disability certificate. I am fully agreeing with the findings recorded by the Tribunal so far as the Ex.A.5 disability certificate is concerned.

16 Thus, in all, the amount of compensation to which the petitioner is entitled,

under various heads, is as follows:

Pain and suffering: Rs. 18,000/-

Extra nourishment: Rs.2,000/-

Incidental expenses: Rs.1,000/-

Medicines: Rs.3,000/-

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Total: Rs.24,000/-

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17 The compensation awarded under the above heads is just and reasonable to meet the ends of justice. The petitioner is also entitled to interest at 7.5% p.a. on the enhanced amount of compensation from the date of filing of the petition till the date of deposit. The Jeep bearing No.AP – 04 – U – 4688, which belongs to the first respondent was validly insured with the second respondent as on the date of accident. Therefore, the second respondent has to indemnify the liability of the first respondent. Hence the 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, the amount compensation Rs.11,000/- as awarded by the Tribunal is enhanced to Rs.24,000/- with interest at 6% p.a. on Rs.11,000/- and at 7.5% p.a. on the enhanced amount of Rs.13,000/-. The respondent Nos.1 and 2 are directed to deposit the amount of Rs.24,000/- with interest jointly and severally. No order as to costs. As a sequel, miscellaneous petitions pending in this appeal, if any, shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 16th April, 2015.

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