

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.1670 of 2004

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JUDGMENT:

This civil miscellaneous appeal is filed under Section 173 of M.V. Act, challenging the judgment and award dated 30.01.2004, passed by the Chairman, MACT-cum-District Judge at Karimnagar in O.P No.165 of 2001, wherein and whereby an amount of Rs.35,000/- was awarded to the appellant as against the claim of Rs.2,90,000.

2. The parties will be hereinafter referred to as they are arrayed before the Tribunal, to avoid confusion.

3. The facts leading to filing of the present appeal are briefly as follows:

On 18.02.2000 at 9.30 a.m., the petitioner and her husband were proceeding to Chabolu village from Gowliwada of Karimnagar District on motorcycle. After crossing of Kundanpalli crossroad, the driver of the lorry bearing No. ADQ-7155 had driven the same in a rash and negligent manner and dashed the motorcycle from opposite direction. The accident occurred due to rash and negligent driving of the driver of the lorry, against whom, the Station House Officer, Ramagundam Police Station registered a case in Crime No.17 of 2000 under Sections 337 and 304 IPC. Due to the accident, the petitioner fell down from the motorcycle and sustained fracture to her right forearm and injuries on the teeth and other parts of the body and took treatment as inpatient in Surya Hospital, Godavarikhani for long time and incurred an amount of Rs.2 lakhs towards medicines and treatment. By the time of accident, the petitioner was aged about 36 years and a housewife. The lorry bearing No.ADQ 7155, which belongs to the second respondent, was insured with the third respondent w.e.f. 02.02.2000 to 01.02.2001. The present petition is filed under Section 166 of M.V.Act claiming compensation of Rs.2,90,000/- from the respondents No.1 to 3 jointly and severally.

4. The first respondent remained ex parte. The second respondent filed counter denying all the averments made in the petition including the manner of accident

and the nature of injuries sustained by her. The accident occurred due to rash and negligent driving of the motorcycle by the husband of the petitioner and there was no negligence on the part of the driver of the lorry. The lorry which belongs to this respondent was insured with the third respondent vide policy No.3081, therefore, the third respondent is alone liable to pay compensation, if any, to the petitioner.

5. The third respondent filed counter denying all the averments made in the petition including the manner of the accident and the nature of injuries sustained by the petitioner *inter alia* contending that the accident occurred due to rash and negligent driving of the motorcycle by the husband of the petitioner and there was no negligence on the part of the driver of the lorry. The petitioner is not entitled to claim compensation unless she proves that the driver of the lorry was having valid and effective driving licence as on the date of accident. The amount of compensation claimed by the petitioner under the various heads is highly excessive and exorbitant. Hence, the petition may be dismissed.

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

- i. Whether the accident took place due to the rash and negligent driving of the vehicle i.e., lorry bearing Registration Number ADQ-7155 by the driver?
- ii. Whether the petitioner is entitled to compensation, and if so, to what amount and from whom?
- iii. To what relief?

7. During the course of enquiry, on behalf of the petitioner, PWs. 1 to 4 were examined and Exs. A1 to A11 and Ex.X1 were marked. On behalf of the respondents, no oral or documentary evidence was let in.

8. On appraising the oral, documentary evidence and other material available on record, the tribunal has arrived at a conclusion that the accident occurred due to rash and negligent driving of the lorry bearing No.ADQ 7155, which resulted injuries to the petitioner and allowed the petition in part awarding compensation of Rs.35,000/- with interest @ 9% p.a. from the date of petition till the date of the payment. Feeling aggrieved by the judgment and award of the

tribunal, the claimant preferred the present appeal.

9. The contention of the learned counsel for the petitioner/ appellant is three fold:

1) The tribunal discarded the testimony of PW.4 and Exs.A5 to A9 on assumptions and presumptions.

2) The tribunal has not considered the oral testimony of PW.3 and recitals of Ex.A10 disability certificate.

3) The amount of compensation was awarded by the tribunal is too low.

10. ***Per contra***, learned counsel for the third respondent/ Insurance Company submitted that the tribunal rightly considered the oral testimony of PW.1 and discarded Exs.A5 to A9. He further submitted that the petitioner did not incur disability therefore she is not entitled for any amount under the head 'permanent disability'. He further submitted that the amount of compensation awarded by the tribunal is just and reasonable.

11. Basing on the rival contentions, the point that arises for consideration in this appeal is:

Whether the tribunal has awarded just and reasonable compensation or not?

POINT :

12. The finding of the tribunal is that the accident occurred due to rash and negligent driving of the driver of the lorry bearing No.ADQ 7155 became final in view of non-filing of the appeal or cross-objections by the respondents. 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 lorry bearing No.ADQ 7155, which resulted injuries to the petitioner.

13. A perusal of the record reveals that the tribunal awarded compensation under the following heads.

a). towards pain and suffering – 10,000/-

b). towards the medicines and treatment – 20,000/-

c). towards the attendant charges - 3,000/-

d).towards the extra nourishment and other miscellaneous expenditure – 2,000/- in total Rs.35,000/-.

14. The question that falls for consideration at this juncture is whether the tribunal has awarded just and reasonable compensation or not.

15. A perusal of testimony of PW.1 reveals that due to accident, she sustained fractures to right forearm and 3 simple injuries. As per the recitals of Ex.A3-wound certificate, the petitioner sustained fracture to forearm and injuries on left knee and 2 injuries on great Toe. Ex.A3-wound certificate was issued by the Government Civil Hospital, Ramagundam. As per the testimony of PW.4, the petitioner took treatment in Surya Hospital from 18.02.2000 to 23.02.2000 and from 13.11.2000 to 23.11.2000. As per the testimony of PW.4, the petitioner sustained fracture to her forearm and two teeth were broken. As per Ex.A3, the petitioner did not sustain injuries on her teeth. The fact remains that the petitioner sustained fracture to right forearm and 3 simple injuries. Due to one fracture and 3 simple injuries, the petitioner might have suffered a lot. Taking into consideration the nature of fracture and injuries sustained by the petitioner, I am inclined to award an amount of Rs.25,000/- towards pain and suffering instead of Rs.10,000/- as awarded by the tribunal. As per the testimony of PW.4, the petitioner spent an amount of Rs.29,650/- under Exs.A9 and A10 towards medicines. The tribunal has not given much credence and credibility to the testimony of PW.4 on the ground that he used to appear in each and every MVOP cases in Karimnagar town. The Chairman of the Motor Accidents Claims is the competent person to say in how many matters a particular doctor appeared. In spite of that the tribunal has awarded an amount of Rs.20,000/- towards medicines and treatment. Having regard to the facts and circumstances of the case, the tribunal rightly awarded an amount of Rs.20,000/- towards medicines and treatment, Rs.3,000/- towards attendant charges and R.2000/- towards extra nourishment.

16. As per the testimony of PW.3, due to one fracture and 3 simple injuries, the petitioner might not have attended to her domestic work atleast for a period of three months including the treatment period. Hence, I am inclined to award an amount of Rs.3,000/- towards loss of earnings. The oral testimony of PW.3

coupled with Ex.A10 reveals that the petitioner incurred 20% disability. As per testimony of PW.4, the petitioner incurred 10% disability. As per the testimony of PW.4, the fracture sustained by the petitioner is united. Due to fracture to both bones of the right forearm, the petitioner may not enjoy her life like other persons. Due to restriction of movement of the right forearm, the petitioner has to suffer through out her life. It is a settled principle of law that the percentage of functional disability cannot be equated with loss of earning capacity in each and every case. It is not the case of the petitioner that she has not been attending to any work due to 20% of functional disability. It is a matter of common knowledge that a house wife may feel some difficulty to attend the domestic work right from morning to evening with 20% functional disability to right forearm. The petitioner may suffer to certain extent. Taking into consideration the age and other attending circumstances, this Court is inclined to award an amount of Rs.35,000/- towards loss of future amenities. The compensation awarded under various heads is as follows:

Pain and suffering : Rs. 25,000-00

Medicines and treatment : Rs. 20,000-00

Attending charges : Rs. 3,000-00

Extra nourishment charges : Rs. 2,000-00

Loss of earnings during the
treatment period : Rs. 3,000-00

Loss of future amenities : Rs. 35,000-00

Total : Rs. 88,000-00

The compensation awarded under the above heads is just and reasonable to meet the ends of justice. Thus, the petitioner is entitled for total compensation of Rs.88,000/- which is just and reasonable. Accordingly, the point is answered.

17. It is not in dispute that the lorry bearing No.ADQ 7155, which belongs to the second respondent was insured with the third respondent. The second

respondent being the owner of the crime vehicle is vicariously liable for the wrongful acts done by his driver. The 3rd respondent being insured has to indemnify the liability of the second respondent. Therefore, the respondents No.1 to 3 are jointly and severally liable to pay compensation to the petitioner.

18. In the result, M.A.C.M.A. is allowed by enhancing the compensation from Rs.35,000/- to Rs.88,000-. The petitioner is also entitled for interest @ 7.5% p.a. on the enhanced compensation of Rs.53,000/- from the date of petition till the date of deposit of the amount. There shall be no order as to costs in this appeal.

Miscellaneous petitions, if any, pending in this appeal, shall stand closed.

T.SUNIL CHOWDARY, J

Date: 05.10.2015

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