

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.1049 OF 2009

JUDGMENT:

This appeal is preferred by the appellant/respondent No.2 challenging the judgment and award, dated 31.01.2008, passed in O.P.No.17 of 2006 on the file of the Motor Accidents Claims Tribunal-cum-IV Additional District and Sessions Judge (FTC), Siddipet (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 the date of accident, the petitioner along with his friend was proceeding on a Hero Honda Motorcycle bearing No.

AP-23D-4748 on the left side of the road. When they reached near Kura Pandari Rice Mill, the driver of the Auto bearing No.

AP-23U-1505 had driven the same in a rash and negligent manner and hit the motorcycle of the petitioner. The accident occurred due to the rash and negligent driving of the driver of the auto, against whom the Station House Officer, Siddipet II Town Police Station registered a case in Crime No.93 of 2003 for the offence punishable under Section 337 I.P.C. Due to accident, the petitioner sustained grievous injuries and took treatment as inpatient for long time and spent huge amount towards medicines and treatment. Due to injuries, the petitioner could not attend his work for long time and thereby, lost his income. The auto, which belongs to respondent No.1, was insured with respondent No.2 with effect from 14.04.2003 to 15.04.2004. Therefore, respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.1,00,000/- to the petitioner.

4. Respondent No.1 filed counter denying all the averments made in the petition *inter alia* contending that the accident occurred due to the negligence of the rider of the motorcycle and there was no negligence on the part of the driver of the auto. The petitioner filed the petition with an intention to extract money from this respondent. The amount of compensation claimed by the petitioner under various heads is highly excessive and exorbitant. Hence, the petition may be dismissed.

5. Respondent No.2 filed counter denying all the averments made in the petition *inter alia* contending that the accident occurred due to the rash and negligent driving of the rider of the motorcycle and there was no negligence on the part of the driver of the auto. The petitioner sustained only simple injuries. Therefore, this respondent is not liable to pay compensation to the petitioner if the driver of the auto was not having valid and effective driving licence as on the date of accident. The amount of compensation claimed by the petitioner under 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:

1. Whether the accident occurred due to rash and negligent driving of the driver of the Auto bearing No.AP 23 U 1505?
2. Whether the claimant is entitled for compensation, and if so to what extent and from whom?
3. To what reliefs, if any?

7. During the course of trial, on behalf of the petitioner, P.W.1 was examined and Exs.A.1 to A.13 were marked. On behalf of the respondents, RW.1 was examined and Exs.B.1 and B.2 were marked.

8. 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 petitioner and allowed the petition in part by awarding compensation of Rs.60,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

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

10. Heard Sri R.K.Suri, the learned counsel for respondent No.2 and Sri K.Sreedhar, the learned counsel for the petitioner.

11. The contention of the learned counsel for respondent No.2 is two fold: (1) The quantum of compensation awarded by the Tribunal is on higher side, and (2) The Tribunal failed to consider that the driver of the auto was not having valid and effective driving licence as on the date of accident, therefore, respondent No.2 is not

liable to pay compensation.

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12. Per contra, the learned counsel for the petitioner submitted that the amount of compensation awarded by the Tribunal is just and reasonable. He further submitted that the driver of the auto was having valid and effective driving licence as on the date of accident. Therefore, respondent No.2 has to indemnify the liability of respondent No.1.

13. Now the points that arise for consideration in this appeal are:

1. Whether the Tribunal has awarded just and reasonable compensation to the petitioner or not?
2. Whether the driver of the auto was having valid and effective driving licence as on the date of accident or not?

Point No1:

14. As per the finding of the Tribunal, the accident occurred due to the rash and negligent driving of the driver of the auto which resulted in injuries to the petitioner. Respondent Nos.1 and 2 have not adduced any evidence much less legally admissible evidence to prove the negligence, if any, on the part of the rider of the motorcycle. This aspect was rightly considered by the Tribunal. The Tribunal has assigned cogent and valid reasons to its finding on issue No.1. 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 auto. The oral testimony of PW.1 coupled with Exs.A.3 and A.8 reveals that the petitioner sustained fracture to right elbow joint and one simple injury. The Tribunal has awarded an amount of Rs.6,000/- towards pain and suffering. Taking into consideration the nature of the injuries sustained by the petitioner, the Tribunal has rightly awarded an amount of Rs.15,000/- towards medicines and treatment. The Tribunal gave a specific finding that due to fracture, the petitioner might not have attended to his work at least for a period of five months and awarded an amount of Rs.20,000/- towards

loss of earnings. It is a known fact that a person, who sustained fractures, has to take special diet for uniting the bones. Taking into consideration this aspect, the Tribunal has rightly awarded an amount of Rs.4,000/- towards extra nourishment. The Tribunal has assigned cogent and valid reasons while awarding compensation under different heads. The claimant has not preferred any appeal challenging the quantum of compensation. The amount of compensation awarded by the Tribunal under different heads is just and reasonable to meet the ends of justice. In the light of the foregoing discussion, I am unable to accede to the contention of the learned counsel for respondent No.2 that the amount of compensation awarded by the Tribunal is on higher side.

POINT No.2:

15. The oral testimony of RW.1 coupled with Ex.B.2 clearly reveals that the driver of the auto was having driving licence to drive the light motorcycle. The auto is a light motor vehicle. The material placed before this Court clinchingly establishes that the driver of the auto was having valid and effective driving licence to drive the auto as on the date of accident. Absolutely, there is no material available on record to establish that respondent No.1 had violated the terms and conditions of the policy so as to absolve the liability of respondent No.2. Respondent No.1 being the owner of the auto is vicariously liable for the wrongful acts done by his driver during the course of employment. The auto was insured with respondent No.2 under Ex.B.1 – Policy as on the date of accident. Therefore, respondent No.2 has to indemnify the liability of respondent No.1. Hence, there are no grounds much less valid grounds to interfere with the well considered judgment and award of the Tribunal.

16. In the result, the Appeal is dismissed. There shall be no order as to costs.

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

T.SUNIL CHOWDARY, J

Date: 31.03.2015

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