

HONOURABLE SMT JUSTICE ANIS

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M.A.C.M.A.No.08 of 2005

JUDGMENT:

This appeal is filed by the appellant/petitioner under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the order and decree, dated 12.08.2004, in M.V.O.P.No.562 of 2001, passed by the Chairman, Motor Accident Claims Tribunal-cum-V Additional District Judge, Guntur, awarding compensation of Rs.1,25,109/- against the respondents.

2. Appellant/petitioner filed the aforesaid M.V.O.P. under Sections 166 and 163-A of the Act claiming compensation of Rs.2,00,000/- on account of injuries sustained by him in a motor vehicle accident that occurred on 05.04.2001.

3. For the sake of convenience, the parties hereinafter will be referred to, as they are arrayed in the Original Petition.

4. The brief averments made in the petition are that on 05.04.2001 at about 10:00 p.m while the petitioner and others coming in Auto bearing No.AP-7V-4400 from Tenali to Angalkuduru and when they reached near bridge down Tenali, the driver of auto drove the vehicle in a rash and negligent manner with high speed, due to which the auto turned turtle and the petitioner sustained severe injuries. Thereafter, the petitioner was admitted in a private nursing home and later shifted to Government General Hospital, Guntur for better treatment. A case in Crime No.49 of 2001 was registered against the driver of auto before the Station House Officer, Tenali III Town Police Station. The petitioner is an agricultural coolie and getting Rs.100/- per day. Due to the accident, the petitioner is unable to do any work and he spent huge amount for treatment. He is the only earning member in the family. The accident occurred only due to rash and negligent driving of driver of auto No.AP-7V-4400, which was owned by the first respondent and insured with the second respondent and thus, both the respondents are jointly and severally liable to pay compensation to the petitioner.

5. The brief averments made in the counter filed by the second respondent are as follows:

The second respondent put the petitioner to prove the manner of accident, his age and income, treatment taken by him in various hospitals and the amount spent towards treatment. He stated that the petitioner in collusion with the first respondent suppressed the information and failed to intimate about the accident and that the compensation claimed by the petitioner is high and excessive and prayed the Court to dismiss the petition.

6. Basing on the above pleadings, the Tribunal framed three issues and to substantiate the claim, the petitioner examined P.Ws.1 and 2 and got marked Exs.A.1 to A.7 and Ex.X.1. On behalf of the respondents, no oral or documentary evidence was adduced.

7. After considering the oral and documentary evidence, the Tribunal held that the accident occurred due to rash and negligent driving of driver of Auto bearing No.AP-7V-4400 and awarded compensation of Rs.1,25,109/- along with interest at 9% per annum to the petitioner against the respondents.

8. Being aggrieved by the award passed by the Tribunal against the respondents, the appellant/petitioner preferred the present appeal.

9. Learned counsel appearing for the appellant/petitioner argued that the Tribunal erred in considering the disability of the petitioner as 60% instead of 100%; that due to injuries, the petitioner sustained permanent disability; that the Tribunal also erred in awarding meagre amount towards medical expenses and finally prayed to enhance compensation and also to grant compensation under the heads of extra nourishment, attendant charges and pain and suffering.

10. On the other hand, learned counsel for second respondent argued that after considering the evidence of P.Ws.1 and 2, the Tribunal awarded just and reasonable compensation and the said finding needs no interference by this Court and finally prayed to dismiss the petition.

11. Having regard to the submissions made by learned counsel appearing for both the parties, the points which are to be decided in this appeal are as follows:

1. Whether the compensation awarded by the Tribunal is just and reasonable?
2. Whether the appellant/petitioner is entitled for enhancement of compensation as prayed for?

3. Whether the appellant/petitioner is entitled for compensation against the second respondent as prayed for?

12. POINTS:

The second respondent is not disputed about the manner of accident. On perusal of evidence of P.Ws.1 and 2, it is clear that the accident occurred due to rash and negligent driving of driver of auto bearing No.AP-7V-4400, in which the petitioner sustained grievous injuries. It is not in dispute that after the accident, the petitioner had taken treatment in various hospitals. It is also admitted by P.W.1 that after the accident, initially the petitioner was admitted in a private hospital and later shifted to Government General Hospital, Guntur on 06.04.2001 and undergone operation on 15.04.2001 and discharged 15.05.2001 and again he readmitted on 20.06.2002 and discharged on 20.07.2002. According to P.W.1, due to the accident, the petitioner is unable to do any work and his family is depending on the income of the petitioner. Since the petitioner has not produced any document to show about his income, the Tribunal has taken the notional income of the petitioner at Rs.15,000/- per annum and awarded an amount of Rs.1,17,000/- towards loss of earnings and granted an amount of Rs.8,109/- towards medical expenses. In total, the Tribunal granted an amount of Rs.1,25,109/- towards compensation.

13. The petitioner was in the hospital for a considerable period due to injuries suffered by him and his left leg was also amputated. Considering the nature of injuries, I am inclined to grant an amount of Rs.10,000/- towards pain and suffering, Rs.5,000/-towards extra nourishment and Rs.5,000/- towards attendant charges. Thus in total the petitioner is entitled to Rs.1,45,109/- (1,125,109 + 20,000/-) towards compensation.

14. As far as the rate of interest is concerned, in view of the different rate of interests granted by the Hon'ble Supreme Court in the decisions reported in ***Sanobanu Nazirbhai Mirza and others v. Ahmedabad Municipal Transport Service*** and ***Rebeka Minz and others v. Divisional Manager, United India Limited Insurance Company Limited and another***, I am of the view that interest at 7.5% p.a shall be awarded on the enhanced amount from the date of appeal till the date of realisation.

15. In view of the above discussion, the appeal is partly allowed enhancing the

compensation from Rs.1,25,109/- to Rs.1,45,109/- along with interest at 7.5% per annum on the enhanced amount from the date of appeal till the date of realisation. No order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

ANIS, J

OCTOBER 09, 2015

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HONOURABLE SMT JUSTICE ANIS

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Date: 09.10.2015

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