

THE HON'BLE SMT. JUSTICE ANIS

M.A.C.M.A. No. 1411 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 award dated 06.07.2004, passed by the Motor Vehicles Accidents Claims Tribunal-Cum-District Judge, Nizamabad, in O.P.No.385 of 1998, awarding compensation of Rs.65,300/-.

2. The petitioner filed the above O.P. under Section 166 of the Act, claiming compensation of Rs.2,00,000/- for the injuries sustained by him in a motor vehicle accident.

3. The brief averments made in the petition are as follows.

On 14.02.1998 at about 7.00 pm., while the petitioner was travelling in a Jeep bearing No.AP-1/3245 from Soan Towards Nirmal, and when the jeep reached Ganjal village shivar on Hyderabad to Nagpur National High Way No.7, the driver of the Jeep drove the Jeep in a rash and negligent manner at high speed and lost control over the jeep, due to which the jeep turned turtle on the road side. The petitioner came under the jeep, his right foot fractured at two places, right leg fractured, also received injuries to left leg and other parts of the body. He was immediately admitted in Government Hospital, Nirmal, thereafter he was shifted to the Government Headquarters Hospital, Nizamabad. He underwent two major operations, steel rod was inserted, and still he is suffering from pain, mental agony and stress. He took treatment in private hospitals and incurred an amount of Rs.1,00,000/-. Prior to the accident the petitioner was fruit vendor and doing other business and earning Rs.6,000/- per month. Due to fracture injuries received in the accident the petitioner is unable to move from the bed and cannot walk and work. Thus he lost his earning capacity and depending on others permanently. According to the petitioner, the accident took place due to the rash and negligent driving of the driver of

the jeep belonging to the 1st respondent and insured with the 2nd respondent. Therefore, the 1st and 2nd respondents are jointly and severally liable to pay the compensation to the petitioner.

4. The 1st respondent remained ex parte.

5. The brief averments made in the written statement filed by the 2nd respondent are as follows:

The 2nd respondent put the petitioner to prove the manner of accident, his age, occupation and income. The 2nd respondent denied the injuries sustained by the petitioner and the treatment taken by him in various hospitals by spending huge amounts. The petitioner received only simple injuries and the claim of the petitioner is high and excessive and hence prayed the court to dismiss the petition

6. Basing on the pleadings, the Tribunal framed three issues. To substantiate his claim the petitioner examined PWs.1 and 2 and got marked Exs.A.1 to A.11 apart from Ex.X.1 & X.2 and Exs.C.1 and C.2. On behalf of the second respondent, RW.1 was examined and Ex.B.1 and B.2 were marked.

7. The Tribunal, after considering the oral and documentary evidence, held that the accident took place due to the rash and negligent driving of the driver of the jeep due to which the appellant sustained injuries and accordingly awarded Rs.65,300/- towards compensation along with interest @ 9% p.a.

8. Not satisfied with the compensation awarded by the Tribunal, the appellant/petitioner preferred the present appeal.

9. The learned counsel for the appellant argued that the Tribunal without considering two grievous and one simple injuries received by the appellant, awarded meagre compensation. The Tribunal also not granted transportation charges and the compensation awarded towards medical expenses is very low. Therefore, he prayed the Court to enhance the compensation by considering the injuries received by the appellant.

10. On the other hand the learned counsel for the Insurance Company argued that the compensation granted by the Tribunal is just and reasonable and the Tribunal considered the injuries as well as the disability suffered by the appellant and the said findings need no interference and hence prayed the Court to dismiss the appeal.

11. Having regard to the submissions made by the learned counsel for the both parties, the points that arise for consideration are:

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

12. **Point No.1:**

A perusal of the evidence on record shows that the accident was occurred due to the rash and negligent driving of the driver of the jeep and the said finding of the Tribunal needs no interference as there was no contra evidence to disbelieve the said fact.

13. **Point No.2:**

Coming to the quantum of compensation, PW.1 in his evidence stated that he received two grievous injuries and one simple injury, and he took treatment initially in the Government hospital, Nirmal where PW.2 gave treatment to the appellant. Ex.A.3 is the wound certificate issued by the Civil Surgeon, Community Health Centre, Nirmal which shows that the appellant received the following injuries.

- 1) Lacerated wound on the right heel 1" x 1/2" x 1/6"
- 2) Bruise with fracture of right leg bones lower 1/3rd region
- 3) Small abrasion on right knee joint region.

14. As per Ex.A.3 the injuries Nos.1 and 2 are grievous in nature and injury No.3 is simple in nature. Thereafter, the appellant was taken to Government Headquarters Hospital, Nizamabad on 15.02.1998 where he was treated by PW.2. The Tribunal after considering the evidence on record rightly awarded Rs.35,000/- towards disability; Rs.5000/- towards pain and suffering; Rs.18,000/-

towards loss of earnings and Rs.2300/- towards medical expenses.

15. The main contention of the learned counsel for the appellant is that the Tribunal has not awarded any compensation for transportation charges and the amount awarded towards medical expenses is very low. In my opinion, the Tribunal, basing on the Ex.A.9- medical bills, rightly fixed the compensation Rs.2300/- towards medical expenses.

16. Admittedly, the Tribunal has not granted any compensation towards transportation and other charges. The accident occurred at Ganjal village shivar on Hyderabad to Nagpur National High way No.7. Initially the appellant was shifted to Government Hospital, Nirmal from there he was shifted to Government Headquarters Hospital, Nizamabad. He also took treatment in private hospitals. Therefore, he must have spent some amount towards transportation charges. Hence, an amount of Rs.2000/- is awarded towards transportation charges. The appellant is also entitled to Rs.2,700/- towards medical expenses as he received two grievous and one simple injuries. Thus the petitioner is entitled for enhancement of compensation from Rs.65,300/- to Rs.70,000/-.

17. Accordingly, the compensation awarded by the Tribunal is enhanced from Rs.65,300/- to Rs.70,000/-. The enhanced amount of Rs.4,700/-, carries interest @ 7.5% p.a. from the date of appeal till the date of realisation.

18. In the result, the appeal is partly allowed. No order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

(ANIS, J)

17th July, 2015
Js.