

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

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M.A.C.M.A.No.418 of 2009

JUDGMENT:

This appeal is filed by the petitioner under Section 173 of Motor Vehicles Act challenging the judgment and award, dated 07.08.2004 passed in M.V.O.P.No.1067 of 2002 on the file of the Motor Vehicle Accident Claims Tribunal-cum-X Additional District Judge (FTC), at Guntur.

2. The parties are hereinafter referred to as they are arrayed in the O.P. before the Tribunal to avoid confusion.

3. The facts leading to filing of the appeal, in brief, are as follows:

On 01.09.2002 at about 7.00 p.m. while the petitioner and with others were proceeding from Cocherla to Velpuru in the jeep bearing registration No.AP7X-2831, when the jeep reached in between Kanumarlapudi to Savalyapuram, the driver of the jeep drove the same in a rash and negligent manner and lost control over the jeep and hit against the bridge wall. The Station House Officer, Savalyapuram registered a case in Crime No.37 of 2002 under Sections 337 and 338 IPC against the driver of the jeep. Due to the accident, the petitioner sustained fractures and injuries and took treatment at Teja Nursing Home, Narasaraopet for 10 days. The petitioner spent an amount of Rs.20,000/- towards medicines and treatment. By the time of accident, the petitioner was aged about 35 years and used to earn Rs.75/- per day by attending cooli work. Due to fracture, the petitioner sustained permanent disability, thereby lost her future income. The jeep bearing No.AP 7X 2831, which belongs to the first respondent was insured with second respondent company with effect from 05.01.2002 to 04.01.2003. Therefore, respondents 1 and 2 are jointly and severally liable to pay the compensation to the petitioner. Hence, the petitioner filed the claim petition claiming compensation of Rs.1,00,000/-.

4. The first respondent remained *ex parte*. The second respondent filed counter denying all the material averments made in the petition *inter alia* contending that there was no rash and negligent driving on the part of the driver of the jeep to cause the accident. This respondent is not liable to pay the compensation to the petitioner unless the petitioner establishes that the driver of the jeep was having valid and effective driving licence as on the date of accident. The amount of compensation claimed by the petitioner under various heads is excessive and exorbitant and prayed to dismiss the petition.

5. Basing on the above pleadings, the Tribunal framed the following issues:

1. Whether the accident took place due to the rash and negligent driving of the driver of the jeep bearing No.AP-7X-2831?
2. To what compensation the petitioner is entitled and from whom?
3. To what relief?

6. During the course of trial, on behalf of the petitioner, PWs.1 and 2 were examined and Exs.A.1 to A.6 were marked. On behalf of the respondents, R.W.1 was examined and Ex.B1 was marked.

7. After analysing the oral and 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 jeep, which resulted injuries to the petitioner and allowed the petition in part by awarding a compensation of Rs.47,700/- with interest at 9% per annum from the date of petition till the date of deposit.

8. Feeling aggrieved by the judgment and award of the Tribunal, the petitioner preferred the present appeal.

9. Heard Sri A.Rajendra Babu, the learned counsel for the petitioner/appellant and Sri P.Harinath Gupta, learned counsel for the second respondent company.

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

1. The amount of compensation awarded by the Tribunal is too meagre. He further submitted that the Tribunal has not rightly considered the income of the petitioner.

2. The amount of compensation awarded by the Tribunal is not just and reasonable.

11. Per contra, learned counsel for the second respondent submitted that the Tribunal has awarded just and reasonable compensation and there are no grounds to interfere with the judgment and award of the Tribunal.

12. Now the question that arises for consideration in this appeal is as follows:

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

13. As per the finding of the Tribunal, the accident occurred due to the rash and negligent driving of the driver of the jeep. The finding recorded by the Tribunal on issue No.1 became final in view of non-filing of the appeal by the respondents. The Tribunal has assigned cogent and valid reasons to its finding. 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, which resulted injuries to the petitioner.

14. As per the testimony of P.W.1, she sustained fracture to right hand and took treatment in Teja Nursing Home, Narasaraopet, from 01.09.2002 to 16.09.2002. Her testimony further reveals that she underwent operations twice to her right hand. As per the testimony of P.W.2 (doctor), the petitioner sustained commuted fracture on lower end of femur of right hand. His testimony further reveals that the petitioner underwent operation. A perusal of Ex.A2 wound certificate reveals that the petitioner sustained fracture to right femur. Due to fracture, the petitioner might have suffered a lot. The Tribunal has not awarded any amount towards pain and suffering. Taking into consideration the nature of the fracture sustained by the petitioner, this Court is

inclined to award an amount of Rs.15,000/- towards pain and suffering. The Tribunal rightly awarded an amount of Rs.5,200/- towards medicines basing on the medical bills produced by the petitioner. Due to fracture, the petitioner might not have attended to her work at least for a period of three months including the treatment period. Hence, this Court is inclined to award an amount of Rs.6,000/- towards loss of earnings. This Court is also inclined to award an amount of Rs.3,000/- towards extra nourishment and other incidental charges. The Tribunal arrived at a conclusion that the petitioner incurred 25% disability. As per the testimony of P.W.2, the petitioner incurred 25% disability. Admittedly, the petitioner has not filed the disability certificate. No doubt, the doctor who treated the petitioner is competent to determine the percentage of disability incurred by the patient. It is not uncommon to exaggerate the things in order to claim compensation from the insurer. The Tribunal or the Court has to scrutinise the oral and documentary evidence meticulously so as to arrive just and reasonable conclusion. As per the testimony of P.W.2, commuted fracture means more than two pieces. The factum of sustaining of commuted fracture to the right hand of the petitioner is not disputed by the second respondent. Due to commuted fracture, it may not be possible for the petitioner to attend the work as usual. Taking into consideration the facts and circumstances of the case, this Court is of the considered view that granting of Rs.50,000/- instead of Rs.42,500/- is just and reasonable. Hence, the petitioner is entitled to total compensation of Rs.79,200/-. The petitioner is entitled to interest on the enhanced amount of compensation at 7.5% per annum.

13. The respondent No.1, who is owner of the crime vehicle, is vicarious liability for the wrongful acts done by his employee. Absolutely there is no material on record to establish that the first respondent has violated the terms and conditions of the policy so as to absorb the liability of the second respondent. Ex.B1 policy was in force as on the date of accident. Therefore, the second respondent has to indemnify the liability of the first respondent. Therefore, respondents 1 and 2 are jointly and severally liable to pay the compensation to the petitioner. Having regard to the facts and circumstances of the case, this Court is of the view that there are grounds much less valid grounds to allow the appeal. Accordingly, point is answered in favour of the petitioner and against the respondents.

14. In the result, the appeal is allowed in part enhancing the compensation from

Rs.47,700/- to Rs.79,200/- with interest at 9% per annum on Rs.47,700/- and at 7.5% per annum on the enhanced amount of compensation of Rs.31,500/- from the date of petition till the date of deposit. Respondents 1 and 2 are jointly and severally directed to deposit the compensation amount with interest. There shall be no order as to costs.

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

T.SUNIL CHOWDARY, J

8th April, 2015

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