

**HON'BLE SRI JUSTICE T.SUNIL CHOWDARY**

M.A.C.M.A. No.741 OF 2009

JUDGMENT:

This appeal is filed by the claimant challenging the judgment and award dated 27.9.2006 passed in M.V.O.P. No.291 of 2002 on the file of the Motor Vehicles Accidents Claims Tribunal-cum-Principal District Court, Guntur.

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

3. The facts leading to filing of the present petition are briefly as follows: On 05.12.2001 at about 10.45 PM the petitioner was proceeding to Katevaram from Tenali on scooter bearing No.AP 16D 4242. When he reached the petrol bunk opposite to V.S.R. College, the driver of lorry bearing No.AP 7T 5398 had driven the same in a rash and negligent manner and dashed against the scooter. Due to the accident, the petitioner fell down from the scooter and sustained grievous injury to spinal cord and multiple injuries to various parts of the body and took treatment in Government General Hospital, Guntur for long time. The petitioner spent huge amount towards medicines and treatment. The Station House Officer, Tenali III Town Police Station registered a case in Crime No.185 of 2001 against the driver of the lorry under Section 338 IPC. At the time of accident, the petitioner was earning Rs.4,000/- per month as Registered Medical Practitioner (RMP). Due to the injuries sustained in the accident, he could attend to work for a long time and thereby lost his income. The first respondent as owner of the offending lorry and the second respondent as its insurer are jointly and severally liable to pay compensation claimed at Rs.3,20,00/- to the petitioner with interest and costs.

4. The first respondent remained ex parte. The second respondent filed counter denying material averments *inter alia* contending that the

accident occurred due to rash and negligent driving of the scooter by the petitioner. There was no negligence on the part of the driver of the lorry. The petition is not maintainable for non-impleading of necessary and proper parties. The first respondent violated the terms and conditions of the insurance policy, therefore, the second respondent is not liable to pay compensation.

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

- 1) Whether the accident occurred due to rash and negligent driving of the lorry No.AP 7T 5398 by its driver and if so whether the petitioner sustained any injuries?
- 2) What would be just amount of compensation that the petitioner could be granted?
- 3) To what relief?

6. During the course of trial, on behalf of the petitioner, P.Ws.1 and 2 were examined and Exs.A1 to A7 and Ex.X1 were marked. On behalf of the second respondent, no oral or documentary evidence was adduced.

7. Basing on the oral and documentary evidence available on record, the Tribunal allowed the petition in part by awarding compensation of Rs.63,000/- with proportionate costs and interest at the rate of 7% per annum from the date of petition till the date of realisation, directing the respondent Nos.1 and 2 jointly and severally to deposit the amount within one month from the date of the judgment. Being not satisfied with the amount of compensation awarded, the claimant preferred the appeal.

8. Sri D.Amareswara Babu, learned counsel for the appellant-claimant submitted that the petitioner incurred permanent disability and the same was not considered by the Tribunal. He further submitted that the Tribunal allowed the petition in part basing on the assumptions and presumptions.

9. Sri T.K.Sridhar, learned standing counsel for the second respondent submitted that the petitioner has not produced disability certificate to establish the permanent or partial disability, if any, incurred. He further submitted that the Tribunal has awarded just and reasonable compensation.

10. The second respondent has not filed appeal challenging the finding of the Tribunal so far as the manner of accident is concerned. The oral testimony of P.W.1 coupled with recitals of Exs.A1 and A3 certified copies of F.I.R., and the charge sheet respectively, clearly reveals that the accident occurred due to rash and negligent driving of the driver of the offending lorry. The finding recorded by the Tribunal has attained finality. 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.

11. The predominant contention of learned counsel for the appellant is that the Tribunal has not considered the disability incurred by the petitioner and awarded meager amount of compensation. The petitioner claimed an amount of Rs.25,000/- towards permanent disability. It is the duty of the petitioner to establish that he incurred permanent disability due to the injuries sustained in the accident. In the instant case, for one reason or the other, the petitioner did not produce disability certificate issued by the Medical Board to substantiate his claim. If really the petitioner incurred permanent disability, what prevented him to approach the Medical Board and obtain disability certificate. In the absence of disability certificate, it is not safe to place reliance on the oral testimony of the petitioner. The Tribunal rightly considered various aspects and refused to grant any amount under the head 'permanent disability'. The petitioner claimed an amount of Rs.25,000/- towards pain and suffering. The Tribunal awarded an amount of Rs.5,000/- under the head pain and suffering. A perusal of Ex.A2 certificate copy of wound certificate clearly reveals

that the petitioner sustained grievous injuries. The petitioner also took treatment in Government General Hospital, Guntur as inpatient. Due to the grievous injuries received by the petitioner in the accident, he might have suffered a lot. Taking the injuries sustained by the petitioner into consideration, I am inclined to award Rs.10,000/- towards pain and suffering instead of Rs.5,000/-. The petitioner claimed an amount of Rs.10,000/- towards medical expenses, extra nourishment and attendant charges. The Tribunal awarded an amount of Rs.10,000/- towards extra nourishment, conveyance, medical and attendant charges as claimed by the petitioner.

12. The petitioner claimed an amount of Rs.2,60,000/- towards loss of future income. It is needless to say that the claimant who incurred permanent disability is entitled for loss of future earnings depending upon the nature of disability incurred by him. As observed earlier, the petitioner did not produce any document to establish that he incurred permanent disability. In the absence of permanent disability, the petitioner is not entitled for any amount under the head 'loss of future income'. The Tribunal awarded an amount of Rs.48,000/- towards loss past earnings on the ground that the petitioner might not have attended his work for a period of one year. A perusal of the record reveals that the Tribunal has minutely considered each and every aspect and granted just and reasonable compensation. Viewed from any angle, there are no grounds much less valid grounds to interfere with the findings recorded by the Tribunal except enhancement of Rs.5,000/- towards pain and suffering.

13. In the result, the appeal is allowed in part, enhancing the quantum of compensation from Rs.63,000/- to Rs.68,000/- (Rupees sixty eight thousand only) with proportionate costs and interest at 7% per annum through out. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

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**T.SUNIL CHOWDARY, J**

Date: 21-1-2015  
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