

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.400 of 2009

JUDGMENT:

1 This appeal, under Section 173 of the Motor Vehicles Act, is filed by the claimant, challenging the Judgment and award dated 31.01.2005 passed in M.V.O.P.No.886 of 2000 on the file of Chairman, Motor Accidents Claims Tribunal-cum-VIII Additional District Judge, Guntur wherein and whereby an amount of Rs.15,000/- was awarded as compensation as against the claim of Rs.1.00 lakh.

2 For the sake of convenience, parties to this appeal will hereinafter be referred as they are arrayed before the Tribunal.

3 The facts leading to filing of the present appeal, briefly, are as follows:

4 On 03.07.2000 at 1.30 p.m, the petitioner was proceeding on his cycle from Tobacco Board on Narsaraopet road in Guntur town and when he reached Ramireddynagar, the driver of the lorry bearing No.AP 7 X 122 came in a rash and negligent manner at high speed and hit the petitioner. The accident occurred due to the rash and negligent driving of the driver of the lorry against whom the Station House Officer, Nagarampalem police station registered a case in Cr.No.167 of 2000 for the offences punishable under Sections 337 IPC. Due to the accident, the petitioner sustained fractures and injuries and took treatment as inpatient in Saint Joseph hospital, Guntur and NIMS, Hyderabad. The parents of the petitioner spent Rs.50,000/- towards medicines and treatment. By the date of accident, the petitioner was aged about 12 years. The lorry bearing No.AP 7 X 122, which belongs to the first respondent was insured with the second respondent as on the date of accident. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.1.00 lakh to the petitioner.

5 First respondent remained *ex parte*. Second respondent filed written statement denying the various allegations made in the petition, inter alia contending that the accident occurred due to the rash and negligent act of the petitioner and that there was no negligence on the part of the driver of the lorry bearing No.AP 7 X 122. The amount of compensation claimed by the petitioner

under various heads is excessive and exorbitant. The petitioner is not entitled to claim compensation against this respondent unless the petitioner establish that the driver of the lorry bearing No.AP 7 X 122 was having valid and effective driving licence as on the date of accident. Hence the petition may be dismissed.

6 Basing on the above pleadings, the Tribunal framed the following issues for trial:

- i. Whether the accident occurred due to rash and negligent driving of the driver of lorry bearing No.AP 7 X 122?
- ii. Whether the petitioner is entitled to compensation and if so, to what amount and against whom?
- iii. To what relief?

7 Before the Tribunal, on behalf of the petitioner, the petitioner himself was examined as P.W.1 and got marked Exs.A.1 to A.7. On behalf of the respondents no oral or documentary evidence was let in.

8 On appreciation of 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 lorry bearing No.AP 7 X 122 which resulted injuries to the petitioner and allowed the petition in part by awarding compensation of Rs.15,000/- with interest at 9% p.a from the date of filing of the petition till the date of deposit and directed the respondent Nos.1 and 2 to deposit the same jointly and severally. Not being satisfied with the compensation awarded by the Tribunal, the petitioner preferred the present appeal.

9 Heard Sri B. Parameswara Rao, the learned counsel for the petitioner and Smt. A. Jayanthi, the learned standing counsel for the second respondent.

10 The contention of the learned counsel for the petitioner is two fold viz., 1) The Tribunal discarded the medical bills on erroneous grounds, 2) The Tribunal has not rightly considered the nature of injuries sustained by the petitioner while awarding compensation under different heads.

11 *Per contra*, the learned counsel for the second respondent submitted that the Tribunal has rightly considered various documents filed by the petitioner

and awarded just and reasonable compensation. She further submitted that there are no grounds much less valid grounds to interfere with or to set aside the judgment and award passed by the Tribunal.

12 Now the point that falls for determination in this appeal is:

“Whether the amount of compensation awarded by the Tribunal is just and reasonable or not?”

Point:

13 The finding of the Tribunal on issue No.1 that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.AP 7 X 122 became final in view of non-filing of appeal or cross-objections by the respondents. 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 lorry bearing No.AP 7 X 122, which resulted injuries to the petitioner.

14 As per the testimony of P.W.1, he sustained fracture and other injuries. A perusal of Ex.A.2 – wound certificate clearly reveals that the petitioner sustained fracture to right temporal parietal bone. The petitioner sustained fracture on vital part of the body in young age. Taking into consideration the nature of fracture sustained by the petitioner, I am inclined to award an amount of Rs.20,000/- towards pain and suffering instead of Rs.8,000/- as awarded by the Tribunal.

15 The petitioner took treatment as inpatient in Saint Joseph hospital, Guntur, NIMS, Hyderabad and CDR hospitals. The petitioner filed medical bills to the tune of Rs.30,349/-. A perusal of these bills reveals that the petitioner made an attempt to exaggerate the amount so as to claim more compensation. The Tribunal or the Court has to scrutinise the medical bills produced by the petitioner meticulously so as to arrive at a just and reasonable conclusion. Taking into consideration the nature of treatment taken by the petitioner in different hospitals, I am inclined to award an amount of Rs.12,000/- towards medicines instead of Rs.7,000/- as awarded by the Tribunal.

16 The Tribunal has not awarded any amount for extra nourishment. Taking into consideration the nature of injuries as well as the age of the petitioner, I am

inclined to award an amount of Rs.3,000/- towards extra nourishment.

17 Admittedly, the petitioner is resident of Guntur, whereas, he has taken treatment in Guntur as well as Hyderabad. The parents of the petitioner might have spent some amount to come to Hyderabad for the treatment of the petitioner. Therefore, I am inclined to award an amount of Rs.3,000/- towards transportation charges.

18 By the date of accident, the petitioner was aged about 12 years and was a non-earning member. Therefore, there is no need to award any amount under the head 'loss of earnings'.

19 The total amount of compensation to which the petitioner is entitled is as follows:

Pain and suffering:	Rs.20,000/-
Medicines:	Rs.12,000/-
Extra nourishment:	Rs.3,000/-
Transportation charges:	Rs.3,000/-

TOTAL	Rs.38,000/-

20 The amount compensation awarded under the above heads is just and reasonable to meet the ends of justice. The petitioner is also entitled to interest at 7.5% p.a. from the date of filing of petition till date of deposit on the enhanced amount of compensation. The first respondent being the owner of the lorry bearing No.AP 7 X 122 is vicariously liable for the wrongful acts done by his driver. The lorry was validly insured with the second respondent as on the date of accident and hence the second respondent has to indemnify the liability of the first respondent. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioner.

21 In the result, the appeal is allowed in part, the amount of compensation of Rs.15,000/- as awarded by the Tribunal is enhanced to Rs.38,000/- directing the respondent Nos.1 and 2 to deposit the compensation jointly and severally with interest at 9% p.a. on Rs.15,000/- as awarded by the Tribunal and at 7.5%

p.a on the enhanced amount of compensation from the date of filing of the petition till the date of deposit. No order as to costs. As a sequel, miscellaneous petitions, if any, pending in this miscellaneous appeal, shall stand closed.

T. SUNIL CHOWDARY, J.

Date: 21st April, 2015

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