

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

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M.A.C.M.A.No.2051 of 2015

JUDGMENT:

This appeal is filed by the second respondent - insurance company under Section 173 of Motor Vehicles Act challenging the judgment and award, dated 01.02.2013 passed in O.P.No.240 of 2008 on the file of the IX Additional District and Sessions Judge (FTC), Ranga Reddy District.

2. For the sake of convenience, the parties are hereinafter be referred to as they are arrayed in the O.P. before the Tribunal.

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

On 14.03.2007 at about 10.30 a.m., the petitioner was proceeding to his office on his motor cycle bearing No.AP-11-S-3531. When he reached 'Y' junction near Narayana College at Himayathnagar, Hyderabad, the driver of a DCM van bearing No. AP-31-V-5071 had driven the same in a rash and negligent manner and dashed against the motor cycle of the petitioner. The accident occurred due to the rash and negligent driving of the driver of the DCM van bearing No.AP-31-V-5071, against whom the Station House Officer, Narayanaguda Police Station, registered a case in Crime No.89/2007. By the time of accident, the petitioner was aged about 33 years and used to earn Rs.10,000/- per month. Due to the accident, the petitioner sustained fracture to right leg and injuries to left leg and other parts of the body and took treatment as in-patient for long time. The DCM Toyota van which belongs to the first respondent was insured with the second respondent. Therefore, respondents 1 and 2 are jointly and severally liable to pay compensation amount of Rs.4,00,000/-.

4. The first respondent filed counter denying all the material averments made in the petition including the manner of the accident and the nature of injuries sustained by the petitioner. The DCM Van bearing No.AP-31-V-5071, which belongs to this

respondent, was insured with the second respondent. Therefore, the second respondent alone is liable to pay compensation. Hence, the petition may be dismissed.

5. The second respondent filed counter denying all the averments made in the petition including the age and income of the deceased *inter alia* contending that the accident occurred due to the rash and negligent driving of the motor cycle by the petitioner and there was no negligence on the part of the driver of the DCM Van. The petitioner sustained simple injuries and he is not entitled to claim compensation unless the driver of the DCM Van was having valid and effective driving licence as on the date of the accident. The amount of compensation claimed by the petitioner under various heads is highly excessive and exorbitant. Hence, the petition may be dismissed.

6. Basing on the above pleadings, the tribunal framed the following issues:

1. Whether the pleaded accident was occurred on 14.03.2007 at about 10.30 a.m. near Narayana College, Himayathnagar 'Y' junction, Narayanaguda, Hyderabad causing injuries to the petitioner due to the rash and negligent driving of DCM van bearing No.AP-31-V-5071 by its driver?
2. Whether the petitioner is entitled for compensation, if so, to what amount and from which respondent?
3. To what relief?

7. During the course of trial, on behalf of the petitioner, PWs.1 and 2 were examined and Exs.A.1 to A.13 were marked. On behalf of the second respondent, R.Ws.1 and 2 were examined and Exs.B1 to B3 were marked.

8. On appraising 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 DCM van bearing No.AP-31-V-5071, and allowed the petition in part by awarding compensation of Rs.2,00,000/- with interest at the rate of 6% per annum from the date of petition till the date of deposit.

9. Feeling aggrieved by the judgment and award passed by the Tribunal, the second respondent-insurance company preferred the present appeal.

10. The contention of the learned counsel for the second respondent (appellant) is two fold:

1. The Tribunal has awarded an amount of Rs.80,000/- towards medicines and treatment even though the petitioner has not filed medical bills.
2. The Tribunal ought not to have awarded an amount of Rs.50,000/- under the head 'pain and suffering' and Rs.50,000/- towards injuries.

11. Per contra, learned counsel for the petitioner submitted that the Tribunal rightly considered the oral and documentary evidence available on record and awarded just and reasonable compensation. He further submitted that there are no grounds much less valid grounds to interfere with the well considered judgment and award passed by the Tribunal.

12. Learned counsel for the appellant filed the paper book. Therefore, this Court is inclined to dispose of the matter without calling for the lower Court records.

13. Now, the point that arises for consideration in this appeal is as follows:

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

14. **POINT:** As per the finding of the Tribunal, the accident occurred due to the rash and negligent driving of the driver of the DCM van bearing No.AP-31-V-5071. The

oral testimony of P.W.1 coupled with Exs.A1, A2 and A3 clearly reveals that the accident occurred due to the rash and negligent driving of the driver of the DCM van bearing No.AP-31-V-5071. Having regard to the facts and circumstances of the case, I am of the considered opinion that the accident occurred due to the rash and negligent driving of the driver of the DCM van bearing No.AP-31-V-5071, which resulted injuries to the petitioner. The Tribunal awarded compensation in the following manner:

1. Rs.50,000/- towards two injuries.
2. Rs.50,000/- towards pain and suffering.
3. Rs.20,000/- towards loss of earnings.
4. Rs.80,000/- towards future treatment.

15. As per the testimony of P.W.1, he sustained fractures to both bones of right leg and grievous injury to left leg. His testimony further reveals that he took treatment in Apollo Hospital, Hyderabad from 14.03.2007 to 21.03.2007. As per the testimony of P.W.2, P.W.1 took treatment as inpatient in Apollo Hospital, Hyderabad, from 14.03.2007 to 21.03.2007. His testimony further reveals that the petitioner sustained compound fractures to both bones of the right leg. His testimony further reveals that the petitioner underwent skin grafting to left leg. In the cross-examination of P.W.2, nothing is elicited to shake his testimony so far as the nature of the fractures sustained by the petitioner.

16. A perusal of Exs.A4, A5, A6 and A7 clearly reveals that the petitioner sustained fractures to both bones of the right leg and underwent skin grafting to left leg. Due to injuries, the petitioner might have suffered a lot. Taking into consideration the nature of injuries sustained by the petitioner, this Court is inclined to award an amount of Rs.50,000/- towards pain and suffering. A perusal of Ex.A8 clearly reveals that the petitioner was drawing monthly salary of Rs.10,000/-. Normally doctors advise the patients to take rest even after discharge from the hospital. It may not be possible for a person to drive the motor cycle with fractures to both legs. Due to fractures, the petitioner might not have attended to his work for a period of four months. Hence, I am inclined to award an amount of Rs.40,000/- towards loss of earnings. As per the

testimony of P.W.2, the petitioner has to undergo another operation for removal of nail fixation. Admittedly, the petitioner has taken treatment in Apollo Hospital, Hyderabad. Therefore, once again he has to undergo treatment in the same hospital for removal of the nail fixation. Taking into consideration the nature of fractures sustained by the petitioner, I am inclined to award an amount of Rs.40,000/- towards future treatment. It is a known fact that the doctors may advise the patients to take special diet for uniting of the fractures. Taking into consideration the nature of injuries sustained by the petitioner, I am inclined to award an amount of Rs.10,000/- towards extra nourishment. One of the family members of the petitioner might have stayed in the hospital to look after his welfare. The family members of the petitioner might have spent some amount towards transportation charges. Hence, I am inclined to award an amount of Rs.5,000/- towards transportation charges. The petitioner sustained 40% functional disability. The disability incurred by the petitioner may not affect his earning capacity. Undoubtedly, the petitioner may not enjoy his life like other persons due to 40% functional disability. Taking into consideration the facts and circumstances of the case, this Court is inclined to award an amount of Rs.30,000/- towards loss of future amenities. The compensation awarded under various heads is as follows:

Loss of earnings : Rs.40,000/-

Pain and Suffering : Rs.50,000/-

Future treatment : Rs.40,000/-

Extra nourishment : Rs.10,000/-

Transportation charges : Rs. 5,000/-

Future amenities : Rs.30,000/-

Total amount of compensation : Rs.1,75,000/-.

17. The amount of compensation of Rs.2,00,000/- awarded by the Tribunal is on higher side. Having regard to the facts and circumstances of the case, awarding of Rs.1,75,000/- is just and reasonable to meet the ends of justice.

18. Even as per the testimony of R.W.2, the driver of the DCM Van was having valid and affective driving licence as on the date of accident. Ex.B1 policy was in force with effect from 25.04.2006 to 24.04.2007. Therefore, the second respondent has to indemnify the liability of first respondent. The petitioner is also entitled for interest at 6% p.a. from the date of petition till the date of realisation as awarded by the Tribunal.

19. In the result, M.A.C.M.A. is partly allowed reducing the compensation from Rs.2,00,000/- to Rs.1,75,000/- with interest at 6% per annum from the date of petition till the date of realisation. No costs.

20. Consequently, miscellaneous petitions pending if any in this appeal, shall stand closed.

T.SUNIL CHOWDARY, J

05th October 2015

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