

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A.No.822 of 2009

JUDGMENT

This appeal is filed challenging the judgment and award dated 01.05.2008 passed in O.P.No.993 of 2004 on the file of the Motor Accident Claims Tribunal-cum-III Additional District Judge (FTC), Nizamabad.

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 28.01.2003, the petitioner and others have boarded an auto bearing No.AP 25 U 1980 at Binola village to go to Nizamabad and when the auto reached within the limits of Binola sivar, the driver of auto had driven the same in a rash and negligent manner, due to which, the auto turned turtle. The accident occurred due to rash and negligent driving of the driver of the auto, against whom, the Station House Officer, Navipet Police Station registered a case in Cr.No.16 of 2003 under Section 337 IPC. Due to the accident, the petitioner sustained injuries on various parts of the body and took treatment in the Government Hospital by spending huge amount towards medicines and treatment. By the time of accident, the petitioner was aged about 25 years and used to earn Rs.8,000/- to 10,000/-per month. Due to injuries, the petitioner could not attend her work and thereby she lost income. The auto bearing No.AP 25 U 1980, which belongs to the first respondent, was insured with the second respondent company w.e.f. 11.04.2002 to 10.04.2003 and the respondents are liable to pay

compensation to the petitioner to the tune of Rs.3,00,000/-.

4. The first respondent remained *ex parte*. The second respondent filed written statement denying all the averments made in the petition, *inter alia*, contending that the first respondent had violated the terms and conditions of policy. Therefore, this respondent is not liable to pay compensation, if any, to the petitioner. The petitioner sustained only simple injuries. The amount of compensation claimed by the petitioner under various heads is highly excessive and exorbitant.

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

- (i) Whether the accident was caused due to rash and negligent driving of the driver of auto bearing No.AP 25 U 1980?
- (ii) Whether the petitioner is entitled for grant of compensation? If so, to what amount and against which of the respondents?
- (iii) 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 A4 were marked. On behalf of the respondents, no oral evidence was adduced, but Exs.B1 and B2 were marked. Basing on the oral, documentary evidence and other available material, the Tribunal arrived at a conclusion that the accident occurred due to rash and negligent driving of the driver of the auto and allowed the petition in part by awarding compensation of Rs.43,500/-. Feeling aggrieved by the judgment and award of the Tribunal, the claimant preferred the present appeal.

7. Heard Sri L. Dayakar Reddy, learned counsel for the appellant and Smt P. Nireekshana, learned Standing Counsel for the second respondent.

8. The only contention of the learned counsel for the appellant-claimant is that the amount of compensation awarded by the Tribunal under various heads is meager. He further submitted that the Tribunal has not rightly appreciated the oral and documentary evidence.

9. Per contra, learned counsel for the first respondent submitted that the Tribunal awarded just and reasonable compensation.

10. The point that arises for consideration in this appeal is, whether the Tribunal has awarded fair, just and reasonable compensation or not?

11. **Point No.1:**

Basing on the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to rash and negligent driving of the driver of the auto. The second respondent did not choose to file an appeal challenging the findings recorded by the Tribunal on issue No.1. The findings recorded by the Tribunal on issue No.1 became final. 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 auto resulting injuries to the petitioner.

12. The Tribunal awarded the compensation under the following heads;

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| (i) | Pain and suffering | -- Rs.28,000/- |
| (ii) | Medicines and treatment- | Rs. 8,000/- |
| (iii) | Loss of income- | Rs. 6,000/- |
| (iv) | Extra nourishment- | Rs. 1,500/- |

In total, the Tribunal awarded compensation of Rs.43,500/-. The oral testimony of P.Ws.1 and 2 coupled with Ex.A3 reveals that the petitioner sustained two fractures. Taking into consideration the nature of the fractures sustained by the petitioner, the Tribunal awarded an amount of Rs.28,000/- towards pain and suffering. The Tribunal has rightly considered the nature of the fractures sustained by the petitioner and awarded just and reasonable compensation. Hence, there are no grounds much less valid grounds to enhance the compensation under the head of pain and suffering.

13. It is a well known fact that the person, who has taken treatment in the Government hospital, has to purchase the medicines from outside. The petitioner took treatment as inpatient in the Government Hospital. Keeping in mind the nature of injuries sustained by the petitioner, the Tribunal has awarded an amount of Rs.8,000/- towards medicines and treatment even though she has not filed even a single scrap of paper. Therefore, the amount of compensation awarded under the head of 'medicines and treatment' is just and reasonable to meet the ends of justice. Except the self-serving testimony of P.W.1, there is no other convincing evidence to prove the income of the petitioner. Due to fractures, the petitioner might not have attended to her work for a period of three months. The Tribunal is of the considered view that the petitioner may earn Rs.2,000/-per month and awarded an

amount of Rs.6,000/-towards loss of earnings. The Tribunal also awarded an amount of Rs.1,500/-towards extra nourishment. A perusal of the record clearly reveals that basing on the oral, documentary evidence and other material available on record, the Tribunal awarded just and reasonable compensation. Having regard to the facts and circumstances, I am unable to accede to the contentions of the learned counsel for the appellant that the Tribunal has not awarded fair, just and reasonable compensation to the petitioner. Hence, there are no grounds much less valid grounds to interfere with the judgment and award of the Tribunal.

14. The appeal is dismissed. No order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand dismissed.

T. SUNIL CHOWDARY, J

23rd February, 2015
sj