

HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.815 of 2009

JUDGMENT:

This appeal is filed by the claimant challenging the judgment and award dated 23.10.2008 passed in MVOP No.39 of 2006 on the file of Chairman, Motor Vehicles Accidents Claims Tribunal-cum-IV Additional District Judge, Guntur, wherein and whereby the Tribunal while awarding an amount of Rs.60,000/- to the petitioner as compensation as against a claim of Rs.2,00,000/-, holding that the claimant is responsible to cause the accident to the extent of 50%.

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

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

4. On 10.12.2005 the petitioner was proceeding on Bajaj Pulsar bike towards Guntur from Nallapadu side. At that time, the driver of auto bearing No.AP 7X 6161 came from opposite direction in a rash and negligent manner and hit the motor cycle of the petitioner. The Station House Officer, Guntur Rural Police Station registered a case in Crime No.318 of 2005 under Sections 337 and 338 IPC against the driver of the auto. The petitioner sustained fractures and was admitted in Government General Hospital, Guntur. He spent huge amount towards medicines and treatment. At the time of accident, the petitioner was aged about 35 years and used to earn Rs.10,000/- per month by doing cloth business. Due to the accident, the petitioner could not run the business for long time and thereby lost income. The respondent Nos.1 and 2 are owners of the auto, which was insured with third respondent at the time of accident. Hence, the petition claiming compensation of Rs.2,00,000/- with interest and costs.

5. Respondent Nos.1 and 2 remained ex parte.

6. Third respondent filed written statement denying all the material averments made in the petition inter alia contending that the accident occurred due to rash and negligent riding of bike by the petitioner and there was no negligence on the part of the driver of the auto. The petitioner sustained simple injuries and took treatment in Government Hospital only. The amount of compensation claimed by the petitioner under various heads is highly excessive and exorbitant. The auto was not insured with third respondent as on the date of the accident and therefore, third respondent is not liable to pay compensation to the petitioner. Hence the petition may be dismissed.

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

- 1) Whether the accident occurred due to the rash and negligent driving of the driver of the auto bearing No.AP 7X 6161?
- 2) Whether the petitioner is entitled for the compensation, if so, to what amount against whom?
- 3) To what relief?

8. During the course of trial, on behalf of the petitioner, P.Ws.1 and 2 were examined and Exs.A.1 to A.10, Exs.X1, X2 and Ex.C1 were marked. On behalf of the third respondent, R.W.1 was examined and Exs.B.1 and B.2 were marked.

9. The Tribunal, after appreciating the oral, documentary evidence and other material available on record, arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the auto as well as the petitioner, apportioned their negligence at 50% each and allowed the petition in part by granting compensation of Rs.1,20,000/-. The Tribunal held that the

respondents are liable to pay compensation of Rs.60,000/- with costs and interest at 7.5% per annum. Feeling aggrieved by the judgment and award passed by the Tribunal, the petitioner filed the present appeal.

10. Heard Sri B.Parameswara Rao, learned counsel for the appellant-claimant and Smt.A.Jayanthi, learned standing counsel for third respondent—Insurance Company.

11. The contention of learned counsel for the petitioner is two fold: (1) The finding recorded by the Tribunal on issue No.1 is based on assumptions and presumptions; and (2) The quantum of compensation awarded by the Tribunal under various heads is too meager. *Per contra*, learned standing counsel for the third respondent submitted that the finding of the Tribunal on issue No.1 is supported by the material available on record. She further submitted that the Tribunal awarded just and reasonable compensation.

12. Now, the points that arise for consideration in this appeal are:

(1) Whether the petitioner also contributed to cause the accident, if so to what extent?

(2) Whether the compensation awarded by the Tribunal was just and reasonable?

POINT No.1:

13. To prove the factum and manner of accident, the petitioner examined himself as P.W.1 and got marked Exs.A1 and A3 certified copies of F.I.R. and charge sheet respectively. To disprove the manner of accident, R.W.1 was examined. As seen from the testimony of P.W.1, on 10.12.2005 himself and one A.Babu Rao were proceeding to Guntur from Ongole on a motor cycle. When they reached near Reddy College, near Nallapadu, at about 7.30 pm, the driver of auto bearing No.AP 7X 6161 driven the same in a rash and negligent manner and dashed against the motor cycle. It is

an admitted fact that R.W.1 is not an eye witness to the accident. In the cross-examination of P.W.1, nothing was elicited to shake his testimony so far as the manner of the accident is concerned. R.W.1 being the employee of third respondent, the possibility of distortion of manner of accident in order to avoid the payment of compensation to the petitioner cannot be ruled out. As per the recitals of Exs.A1 and A3, F.I.R and charge sheet, the accident occurred due to rash and negligent driving of the driver of the auto bearing No.AP 7X 6161.

14. Apart from P.W.1, the driver of the auto is competent person to speak about the manner of accident and negligence if any on the part of the petitioner. For one reason or the other, neither the respondent Nos.1 and 2 nor the third respondent – Insurance Company did not choose to examine the driver of the auto. If really the accident occurred due to negligence of the petitioner also, what prompted the Police to file the charge sheet against the driver of the auto only. If the driver of the crime vehicle abstains himself from entering into the witness box, the Tribunal or court can draw an adverse inference against him. While the facts and evidence remain thus, the Tribunal opined that there is every possibility for the petitioner to observe the auto coming from opposite direction, and held that the petitioner is also equally responsible to cause the accident. There is no evidence much less legally admissible evidence to substantiate the finding recorded by the Tribunal. The finding of the Tribunal is not supported by any material so far as the negligence on the part of the petitioner is concerned. It is not out of place to extract the relevant portion of the charge sheet (E.A3).

“On 10.12.2005 at 7.30 p.m., the accused drove the auto bearing No.AP 7X 6161 in a rash and negligent manner while going to Nallapadu side from Guntur and when he reached near Reddy College, he lost control over the auto and the auto went onto the other side of the road and hit against the new Bajaj Pulsar bike on which L.Ws.1 and 2 were travelling from Nallapadu side.”

15. As per the recitals of charge sheet, the auto went to the other side of the road and hit the motor bike. It appears that the Tribunal has not looked into the recitals of charge sheet. The finding recorded by the Tribunal so far as the negligence on the part of the petitioner is concerned, quite contrary to the recitals of charge sheet. The oral testimony of P.W.1 is fully supported by the recitals of the F.I.R. and the charge sheet (Exs.A1 and A3). Moreover, R.W.1 is not an eye witness to the accident and therefore, his testimony is no way helpful to the respondents to establish that there was negligence on the part of the petitioner also.

16. In ***Syed Sadiq Vs. Divisional Manager, United India Assurance Company***^[1] the Hon'ble apex Court at para No.28 held as follows:

The High Court without assigning any reason concurred with the findings of the Tribunal with respect to contributory negligence. We find it pertinent to observe that both the Tribunal and the High Court erred in holding the appellants/claimants in these appeals liable for contributory negligence. The Tribunal arrived at the above conclusion only on the basis of the fact that the accident took place in the middle of the road in the absence of any evidence to prove the same. Therefore, we are inclined to hold that the contribution of the appellants/claimants in the accident is not proved by the respondents by producing evidence and therefore, the finding of the Tribunal regarding contributory negligence, which has been upheld by the High Court, is set aside.

17. In ***Meera Devi Vs. Himachal Pradesh Road Transport Corporation***^[2] the Hon'ble apex Court at para No.10 held as follows:

10. To prove the contributory negligence, there must be cogent evidence. In the instant case, there is no specific evidence to prove that the accident has taken place due to rash and negligent driving of the deceased scooterist. In the absence of any cogent evidence to prove the plea of contributory

negligence, the said doctrine of common law cannot be applied in the present case. We are, thus, of the view that the reasoning given by the High Court has no basis and the compensation awarded by the Tribunal was just and reasonable in the facts and circumstances of the case.

18. The facts of the case on hand are almost similar to the facts of the cases cited supra. Having regard to the facts and circumstances of the case, and also the principle enunciated in the cases cited supra, I am of the considered view that the finding of the Tribunal that there was contributory negligence on the part of the deceased to cause the accident to the extent of 25% is not sustainable either on facts or on law and the said finding is hereby set aside. In the light of the foregoing discussion, I have no hesitation to hold that the accident occurred due to the rash and negligent driving of the driver of the crime vehicle only. The point is answered accordingly.

POINT No.2:

19. The contention of the learned counsel for the petitioner is that the Tribunal has not awarded just and reasonable compensation to the petitioner. A perusal of the record reveals that the Tribunal granted the compensation under the following heads:

1)	Pain and suffering	:	Rs.25,000
2)	Medical bills	:	Rs.30,000
3)	Loss of earnings	:	Rs.15,000
4)	Physical disability	:	Rs.50,000

Total	:	<u>Rs.1,20,000</u>
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20. The petitioner filed medical bills to the tune of Rs.23,560/- whereas the Tribunal granted an amount of Rs.30,000/- towards medical bills. The Tribunal awarded an amount of Rs.25,000/- towards pain and suffering. By taking income of the petitioner as Rs.5,000/- per month, the Tribunal awarded an amount of Rs.15,000/- towards loss of earnings. What all compensation

awarded by the Tribunal under the above heads is just and reasonable to meet the ends of justice.

21. As per the testimony of P.W.2, the petitioner incurred 25% physical disability. As per Ex.C1 disability certificate, the petitioner sustained 35% functional disability. It is needless to say that functional disability cannot be equated with loss of earnings in each and every case. The so-called functional disability may affect the earning capacity of the petitioner to a limited extent. For one reason or the other, the petitioner did not choose to examine the person who issued disability certificate. Admittedly, the petitioner did not produce the disability certificate issued by the Medical Board. As per the averments made in the petition, the petitioner is businessman by profession. The Tribunal, after taking into consideration avocation of petitioner and the nature of the fracture sustained by him, awarded an amount of Rs.50,000/- towards the disability. The quantum of compensation awarded by the Tribunal under the above head is just and reasonable to meet the ends of justice. Therefore, I am unable to accede to the contention of the learned counsel for the petitioner that the compensation awarded by the Tribunal is too meager. There are no grounds much less valid grounds to interfere with the quantum of compensation granted by the Tribunal. However, in view of the finding of this court on point No.1, the respondent Nos.1 to 3 are jointly and severally liable to pay compensation of Rs.1,20,000/- to the petitioner. Accordingly, point No.2 is answered.

22. In the result, the appeal is allowed in part directing the respondent Nos.1 to 3 jointly and severally pay compensation of Rs.1,20,000/- (Rupees One lakh twenty thousand only) with proportionate costs through out and interest at 7.5% per annum from the date of petition till the date of realisation. It is made clear that the respondents need not pay interest on the amount, if any, deposited

in compliance of the award passed by the Tribunal. The respondents shall deposit the compensation amount within two months from today. Miscellaneous petitions, pending in this appeal, if any, shall stand closed.

T.SUNIL CHOWDARY, J

Date: 16th February, 2015.

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[\[1\]](#) 2014 (2) ALD 133 (S.C)

[\[2\]](#) (2014) 4 SCC 511