

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY
M.A.C.M.A. No.879 OF 2009

JUDGMENT:

1 Assailing the judgment and award dated 05.11.2008 passed in M.V.O.P.No.868 of 2004 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-IV Additional District Judge FAC VII Additional District Judge, Guntur, the claimant filed the present appeal.

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 24.02.2004 at 1.30 PM when the petitioner was loading bamboo baskets in an auto near Gorrela Mandi, Hanuman Junction, the driver of lorry bearing registration No.AP 02 T 1344 drove it in a rash and negligent manner and hit the petitioner causing injuries to him. The accident occurred due to the rash and negligent driving of the driver of the lorry. In connection with the said accident, the Station House Officer, Peddaraveedu police station registered a case in Cr.No.9 of 2004 against the driver of the lorry for the offence punishable under Section 337 IPC. In the said accident, the petitioner sustained fracture to his right hand, skull and other parts of the body. The petitioner took treatment in a private hospital Narsaraopet and Peoples Trauma Emergency Hospital, Guntur. The petitioner spent huge amounts towards medicines and treatment. The petitioner sustained disability due to the fracture sustained by him. By the date of accident, the petitioner was aged about 25 years and used to earn Rs.60,000/- p.a. Due to the permanent disability sustained by him, the petitioner lost his income. The lorry bearing No.AP 02 T 1344

which belongs to the first respondent was insured with the second respondent with effect from 13.08.2003 to 12.08.2004. The policy was in force as on the date of accident. Hence the petitioner filed the claim petition seeking compensation of Rs.3,00,000/- from the respondents jointly and severally.

5 First respondent remained ex parte. Second respondent filed counter denying the material averments 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. The petitioner sustained simple injuries and the amount of compensation claimed by the petitioner under various heads is excessive and exorbitant. The driver of the lorry was not having valid and effective driving licence as on the date of accident. Therefore, this respondent is not liable to pay compensation to the petitioner. 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 the rash and negligent driving of the driver of lorry bearing No.AP 02 T 1344?
- ii. Whether the petitioner is entitled to compensation and if so, to what amount and against whom?
- iii. To what relief?

7 During the course of trial, on behalf of the petitioner P.Ws.1 to 5 were examined and Exs.A.1 to A.11 were marked. On behalf of the 2nd respondent R.W.1 was examined and Exs.B.1 to B.3 were marked.

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 2 T 1344 and allowed the petition in part by awarding compensation of Rs.1,52,000/- with interest at 7.5% p.a from the date of filing of the petition till the date of realisation. Being dissatisfied with the said amount of compensation, the claimant filed the present appeal seeking higher compensation.

9 The learned counsel for the petitioner submitted that the Tribunal failed to consider Ex.A.4 – disability certificate. He further submitted that the Tribunal also failed to appreciate the oral testimony of P.W.4 and awarded meagre amount of compensation.

10 None appeared on behalf of the respondents. Hence I am inclined to dispose of the appeal basing on the merits of the case.

11 Now the point that falls for consideration in this appeal is:

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

Point:

12 As per the testimony of P.W.1, her husband sustained injuries on various parts of the body. As per the testimony of P.W.4, the petitioner sustained abrasions and lacerations on different parts of the body. For better appreciation, the injuries mentioned in Ex.A.3 are extracted hereunder:

1. An abrasion 4 cm X 4 cm, on back of right shoulder
2. An abrasion 4 cm X 3 cm, on right elia region
3. One laceration over scalp right frontal region. 1 X 1 ½ cm
4. A laceration over the right perital region.

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13 The testimony of P.W.4 further reveals that the petitioner underwent operation on 25.2.2004 and was discharged on 22.3.2004. The fact remains that the petitioner underwent operation and took treatment as inpatient in Peoples Trauma Hospital, Guntur. A perusal of the record reveals that the petitioner did not sustain fractures. The petitioner might have suffered a lot due to the injuries sustained by him in the accident. Taking into consideration the nature

of the injuries sustained by the petitioner, the Tribunal awarded an amount of Rs.20,000/- towards pain and suffering, which, in my considered view is just and reasonable. The Tribunal also awarded an amount of Rs.30,000/- towards incidental expenses. It appears that the said amount of Rs.30,000/- includes medical bills to the tune of Rs.19,706/-

14 As per the testimony of P.W.2, the petitioner sustained 40% disability. A perusal of Ex.A.4 reveals that the petitioner sustained 40% disability due to deaf and dumb. Ex.A.4 disability certificate has nothing to do with the injuries sustained by the petitioner. A careful perusal of the testimony of P.Ws.1 and 2 reveals that the petitioner was deaf and dumb even by the date of accident. Therefore, it is not safe to place reliance on the oral testimony of P.W.2 and Ex.A.4 disability certificate. As per the testimony of P.W.4, the petitioner is facing difficulty to speak normally due to the injuries sustained by him. The Tribunal took the disability of the petitioner at 40%. By fixing the income of the petitioner at Rs.17,000/- p.a. notionally, the Tribunal awarded an amount of Rs.1,02,000/- towards loss of future earnings. The Tribunal awarded a total amount of Rs.1,52,000/- as compensation under different heads. Having regard to the facts and circumstances of the case, I am of the considered view that the Tribunal has rightly considered the oral and documentary evidence and arrived at the conclusion that the petitioner is entitled to Rs.1,52,000/- as compensation. In view of the nature of the injuries sustained by the petitioner, awarding of Rs.1,52,000/- as compensation to the petitioner, in my considered view, is just and reasonable. There are no grounds, much less valid grounds to enhance the amount of compensation awarded by the Tribunal. Hence the appeal is liable to be dismissed.

15 _____ Accordingly, the MACMA is dismissed. No costs. As a
sequel, miscellaneous petitions, if any, pending in this appeal, shall
stand closed.

T.SUNIL CHOWDARY, J.

Date: February 25, 2015.

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