

HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A. No.893 OF 2009

JUDGMENT:

This appeal is filed by the claimant challenging the judgment and award dated 31.10.2008 passed in M.V.O.P.No.443 of 2005 on the file of the Motor Accidents Claims Tribunal-cum-V Additional District Judge (Fast Track Court), East Godavari District, Rajahmundry.

2. The parties will hereinafter be referred to as they are arrayed before the Tribunal for the sake of convenience.

3. The facts leading to filing of the present appeal are briefly as follows: On 16.12.2004 at about 10.00 A.M., the petitioner was proceeding towards Quarry Market, Rajahmundry. In the mean while, the driver of the auto bearing No.AP 05V 3208 came from opposite direction in a rash and negligent manner and hit the petitioner. The accident occurred due to the rash and negligent driving of the driver of the auto, against whom the Station House Officer, Rajahmundry Traffic Police Station registered a case in Crime No.255 of 2004 under Section 338 IPC. Due to the accident, the petitioner sustained fracture to right leg and multiple injuries on other parts of the body. The petitioner was admitted in Government General Hospital, Rajahmundry and thereafter he was shifted to Government General Hospital, Kakinada. The petitioner took treatment as inpatient for a long time and spent huge amount towards medicines and treatment. By the time of the accident, the petitioner was aged about 40 years and used to earn Rs.3,000/- per month by attending coolie work. Due to the accident, the petitioner could not attend the work and thereby lost his income. The auto bearing No.AP 05V 3208, which belongs to the second respondent, was insured with the third respondent – insurance company as on the date of the accident. Therefore, the respondent

Nos.1 to 3 are jointly and severally liable to pay compensation to the petitioner. Hence the petition is filed claiming a compensation of Rs.4,00,000/- with interest and costs.

4. Respondent Nos.1 and 2 remained ex parte. Respondent No.3 filed written statement denying all the averments made in the petition *inter alia* contending that the driver of the auto was not having valid and effective driving licence as on the date of the accident and hence, the third respondent – insurance company is not liable to pay compensation to the petitioner. The accident occurred due to the negligence of the petitioner and there was no negligence on the part of the driver of the auto. The amount of compensation claimed by the petitioner under various heads is highly excessive and exorbitant. Hence the petition is liable to be dismissed.

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

- 1) Whether the accident was occurred due to the rash and negligent driving of the driver of the auto bearing Nos.AP 05V 3208?
- 2) Whether the petitioner is entitled for compensation amount as claimed? If so, from which of the respondents?
- 3) To what relief?

6. During the course of the trial, on behalf of the petitioner, P.Ws.1 to 3 were examined and Exs.A1 to A10 were marked. On behalf of the third respondent, no oral or documentary evidence was adduced.

7. On considering the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident was occurred due to the rash and negligent driving of the driver of the auto bearing No.AP 05V 3208 and allowed the petition in part by awarding compensation of Rs.1,28,785/- with proportionate costs and interest at the rate of 7.5% per annum from the date of

petition till the date of deposit, directing the respondents jointly and severally to deposit the amount within one month. Dissatisfied with the quantum of compensation awarded, the claimant preferred the present appeal.

8. Sri Chandra Sekhar Ilapakurti, learned counsel for the appellant-claimant submitted that the amount of compensation awarded by the Tribunal, under various heads, is too meager. He further submitted that the Tribunal has committed error in determining the income of the petitioner as Rs.15,000/- per annum. ***Per contra***, Sri T.Ramulu, learned standing counsel for insurance company submitted that the compensation awarded by the Tribunal is just and reasonable and there are no grounds to interfere with the same.

9. Now, the point that arises for consideration is:

Whether the compensation awarded by the Tribunal is fair, just and reasonable?

Point:

10. As per the findings of the Tribunal, on issue No.1, the accident occurred due to the rash and negligent driving of the driver of the auto bearing No.AP 05V 3208. The insurance company did not file appeal challenging the finding recorded by the Tribunal on issue No.1. Thus, the finding recorded by the Tribunal on issue No.1 became final. I am fully agreeing with the finding recorded by the Tribunal on issue No.1 with regard to the manner of the accident and the factum of injuries sustained by the petitioner.

11. As per the testimony of P.W.2-Doctor, the petitioner sustained fracture to right leg tibia and fibula besides five simple injuries on other parts of the body. The petitioner was admitted in Government General Hospital, Kakinada on 17.12.2004 and discharged on 01.3.2005. A perusal of Ex.A9 case sheet shows that the petitioner took treatment as

inpatient from 17.12.2004 to 01.3.2005 i.e., for a period of 2 ½ months. Taking into consideration the nature of the fracture and other simple injuries sustained by the petitioners as well as the duration of the treatment taken by him as inpatient, I am inclined to award Rs.25,000/- towards pain and suffering instead of Rs.11,500/- as awarded by the Tribunal. Basing on Ex.A6 medical bills, the Tribunal rightly awarded an amount of Rs.18,285/- towards medicines. Taking into consideration the nature of the injuries sustained by the petitioner, I am inclined to award Rs.3,000/- towards extra nourishment. The family members of the petitioner had to visit the Hospital on number of occasions to look after the welfare of the petitioner. Hence, I am inclined to award an amount of Rs.2,000/- towards transportation charges.

12. As seen from the testimony of P.W.1, he used to earn Rs.3,000/- per month by attending coolie work. The Tribunal assessed the annual income of the petitioner at Rs.15,000/- on the ground that the petitioner failed to produce documentary evidence. It is a known fact that a coolie may not get work through out the year and, therefore, he may not be in a position to produce documentary evidence to establish his income. The Tribunal or court has to take into consideration ground realities while assessing the income of the coolies. Earning capacity of a coolie depends upon various circumstances. Taking into consideration the facts and circumstances of the case, I am of the considered view that the petitioner may earn Rs.3,000/- per month on an average. Admittedly the petitioner took treatment as inpatient for a period of 2 ½ months. The petitioner might not have attended to his work at least for a period of three more months after discharge from hospital. Hence, I am inclined to award an amount of Rs.12,000/- towards loss of income during the period of treatment.

13. As per the testimony of P.W.2, the petitioner incurred 40%

disability. A perusal of Ex.A5 disability certificate issued by the Medical Board reveals that the petitioner incurred 40% disability. The Medical Board issued the disability certificate indicating functional disability of particular limb of the human body. The oral testimony of P.W.2 coupled with Ex.A5 reveals that the petitioner incurred 40% functional disability. The so called 40% functional disability confined to the right leg of the petitioner. It is needless to say that functional disability cannot be equated with loss of earning capacity in each and every case. It is the duty of the court or Tribunal to ascertain whether the percentage of the functional disability affects earning capacity of the petitioner, and if so, to what extent. Admittedly, the petitioner was eking out his livelihood by attending coolie work. Unlike Government employees, a coolie requires more physical strength and stamina to attend coolie work. 40% function disability incurred by the petitioner to his right leg would certainly affect the earning capacity of the petitioner. Having regard to the facts and circumstances of the case, I am of the considered view that the loss of earning capacity of the petitioner may be to the extent of 20% only. Since the monthly income of the petitioner was assessed at Rs.3,000/-, 20% of it would come to Rs.600/- per month. By the time of accident, the petitioner was aged about 44 years. The appropriate multiplier for the age group of 41 – 45 years is '14'. Thus, the loss of future earnings comes to (Rs.600 X 12 X 14) Rs.1,08,000/-. The compensation for which the petitioner is entitled to, under various heads, is as follows:

1.	Pain and suffering	:	Rs.25,000
2.	Medical expenses	:	18,285
3.	Extra nourishment	:	3,000
4.	Transportation charges	:	2,000
5.	Loss of income	:	12,000
6.	Loss of future earnings	:	1,08,000
Total			Rs.1,68,285

The petitioner is entitled to Rs.1,68,285/- with interest at 7.5% per annum from the date of petition till realization. Accordingly, the point is answered.

14. In the result, the appeal is partly allowed enhancing the compensation from Rs.1,28,785/- to Rs.1,68,285/- (Rupees one lakh sixty eight thousand two hundred and eighty five only) with proportionate costs throughout and interest at 7.5% per annum from the date of petition till realization. The respondent Nos.1 to 3 shall jointly and severally pay the total compensation within a period of two months from the date of receipt of a copy of this order. Miscellaneous petitions pending if any shall stand closed.

T.SUNIL CHOWDARY, J

Date: 03.3.2015

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