

HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A. No.918 OF 2009

JUDGMENT:

This appeal is filed by the claimant challenging the judgment and award dated 12.12.2008 passed in M.V.O.P. No.1323 of 2005 on the file of the Motor Accidents Claims Tribunal-cum-X Additional District Judge (Fast Track Court), Guntur.

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, in brief, are as follows: On 28.3.2005 the petitioner was proceeding to Macherla on TVS XL Moped bearing No.AP 7D 4449 as pillion rider. At that time, the driver of the jeep bearing No.AP 7W 2477 came in opposite direction in a rash and negligent manner without following traffic rules and hit the TVS Moped. The accident occurred due to rash and negligent driving of the driver of the jeep against whom the Station House Officer, Veldurthi Police Station registered a case in Crime No.8 of 2005 under Section 337 IPC. Due to the accident, the petitioner sustained fracture to right leg and right shoulder. The petitioner was admitted in Government Hospital, Macherla and thereafter he was taken to Sanjeevi Hospital, Guntur where he underwent operation to his right leg. The petitioner spent huge amount towards medicines and treatment. By the time of the accident, the petitioner was earning Rs.100/- per day by attending agricultural works. Due to fracture of right leg, the petitioner incurred permanent disability and thereby he lost income. The jeep which belongs to the first respondent was insured with the second respondent with effect from 20.4.2004 to 19.4.2005, and therefore, the respondent Nos.1 and 2 are liable to pay compensation of Rs.1,90,000/- to the petitioner with

interest and costs.

4. The first respondent remained *ex parte*. The second respondent filed counter denying all the averments made in the petition *inter alia* contending that the rider of the TVS drove the same in a rash and negligent manner due to which the accident occurred. The driver of the jeep was not having valid and effective driving licence as on the date of the accident and therefore, the second respondent is not liable to pay compensation to the petitioner. The amount of the compensation claimed by the petitioner, under various heads, is highly excessive and exorbitant. Hence, the petition is liable to be dismissed so far as the second respondent is concerned.

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

- 1) Whether the accident occurred due to rash and negligent driving of the driver of jeep No.AP 7W 2477?
- 2) To what compensation the petitioner is entitled and from whom?
- 3) To what relief?

7. During the course of the trial, on behalf of the petitioner, P.Ws.1 and 2 were examined and Exs.A1 to A5 were marked. On behalf of the second respondent, R.W.1 was examined and Exs.B1 and B2 were marked.

8. 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 jeep, which resulted in injuries to the petitioner, and allowed the petition in part by awarding compensation of Rs.61,250/- with interest at 7.5% per annum, directing the second respondent to deposit the compensation and also granting liberty to it to recover the amount from the first respondent. Dissatisfied with the quantum of compensation

awarded by the Tribunal, the claimant preferred the present appeal.

9. The second respondent having received the notice in this appeal did not choose to contest the matter. Hence, I am inclined to dispose of the appeal on merits.

10. Heard Sri V.N.Anagani, learned counsel for the appellant – claimant. The predominant contention of the learned counsel for the appellant is that the Tribunal has not properly considered the testimony of P.W.2 and awarded meager amount towards compensation.

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

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

Point:

12. 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 jeep. The finding recorded by the Tribunal, on issue No.1, became final in view of non-filing of appeal or cross-objection by the respondents. The Tribunal has assigned cogent and valid reasons to its finding on issue No.1. I am fully agreeing with the finding recorded by the Tribunal on issue No.1. Having regard to the facts and circumstances of the case, I am of the considered view that the accident occurred due to the rash and negligent driving of the driver of jeep, which resulted in injuries to the petitioner.

13. As per the testimony of P.W.1, he sustained fracture to right leg and took treatment as inpatient. As per the testimony of P.W.2 (Doctor), the petitioner was admitted in Sanjeevi Orthopaedic and Physiotherapy Centre, Guntur on 28.3.2005 and was discharged on 12.4.2005. As per the testimony of P.W.2, the petitioner sustained (1)

Type 3B compound fracture of right tibia; proximal and middle third junction, (2) Fracture lower end of right femur, and (3) Fracture right clavicle. The oral testimony of P.W.2 coupled with Ex.A3, certified copy of the wound certificate, clearly reveals that the petitioner sustained three fractures and underwent operation. Due to the fractures, the petitioner might have suffered a lot. Taking into consideration the nature of the fractures sustained by the petitioner, I am inclined to award an amount of Rs.25,000/- towards pain and suffering instead of Rs.2,000/- as awarded by the Tribunal.

14. As per Ex.A5 medical bills, the petitioner spent an amount of Rs.19,968/- towards medicines. As per the testimony of P.W.2, the petitioner spent an amount of Rs.15,000/- towards medicines. The Tribunal rightly awarded an amount of Rs.15,000/- towards medicines. The Tribunal also rightly awarded an amount of Rs.4,000/- towards conveyance charges and Rs.2,000/- towards extra nourishment. As per the testimony of P.W.2, the petitioner incurred partial disability of 20 to 25%. The Tribunal arrived at a conclusion that the petitioner incurred 15% partial disability. Even as per the testimony of P.W.2, the petitioner is facing difficulty to sit or squat. It is a settled principle of law that the functional disability cannot be equated with loss of earnings. The Tribunal rightly considered various aspects and awarded an amount of Rs.38,250/- towards loss of future earnings.

Due to fractures, the petitioner might not have attended to his work for a period of four months including the period of treatment. Hence, I am inclined to award an amount of Rs.12,000/- towards loss of earnings during the period of treatment. The compensation awarded under various heads is as follows:

		Rs.
1.	Pain and suffering	: 25,000
2.	Medicines	: 15,000
3.	Conveyance charges	: 4,000
4.	Extra nourishment	: 2,000

5.	Loss of earnings during the	
	Period of treatment	: 12,000
6.	Loss of future earnings	: 38,250
	Total	: 96,250

The petitioner is entitled to a total amount of Rs.96,250/- towards compensation, which is just and reasonable to meet the ends of justice.

15. The first respondent being the owner of the offending vehicle is vicariously liable to the wrongful act committed by the driver and the second respondent being the insurer of the offending jeep has to indemnify the first respondent. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioner. The Tribunal has given liberty to the second respondent to recover the amount from the first respondent after depositing the same into court. The first respondent has not filed any appeal or cross-objections challenging the said finding recorded by the Tribunal. Hence, I am not inclined to interfere with the said finding of the Tribunal. The point is, accordingly, answered.

16. In the result, the appeal is allowed in part enhancing the quantum of compensation from Rs.61,250/- to Rs.96,250/- (Rupees ninety six thousand two hundred and fifty only). The respondent Nos.1 and 2 are jointly and severally liable to pay the same with interest at 7.5% per annum and proportionate costs through out, within a period of two months from the date of receipt of a copy of this order. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

T.SUNIL CHOWDARY, J

Date: 09.3.2015
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