

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY
M.A.C.M.A. No.913 of 2009

JUDGMENT:

1 Dissatisfied with the quantum of compensation awarded under the judgment and award dated 28.11.2008 passed in M.V.O.P.No.53 of 2007 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-VI Additional District & Sessions Judge, East Godavari at Rajahmundry, wherein and whereby an amount of Rs.98,000/- was awarded as compensation, 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 31.08.2006 at about 11.30 p.m. the petitioner was proceeding on his motorcycle to Ravulapalem for purchasing medicines from Jonnada. In the meanwhile, the driver of TATA Indica car bearing No.AP 7 TT 994 (hereinafter referred to as 'the crime vehicle') had driven the same in a rash and negligent manner at high speed and dashed against the motorcycle of the petitioner. The accident occurred due to the rash and negligent driving of the driver of the crime vehicle against whom the police registered a case. Due to the accident, the petitioner sustained fractures and took treatment in GSL hospital and spent an amount of Rs.50,000/- towards medicines and treatment. By the time of accident, the petitioner was working as security guard in Jonnada Agricultural Market Committee and was drawing salary of Rs.3,500/- p.m. Hence the petitioner filed the claim petition seeking compensation of Rs.2,50,000 from the respondents jointly and severally. The crime vehicle which belongs

to the first respondent was insured with the second respondent as on the date of accident. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioner.

5 First respondent filed written statement denying the material averments inter alia contending that there was no rashness or negligence on his part. As on the date of accident, the crime vehicle was insured with the second respondent and hence the second respondent alone has to pay compensation, if any, to the petitioner. It is further contended that the accident occurred only due to the rash and negligent driving of the motorcycle by the petitioner. Hence the petition may be dismissed.

6 Second respondent filed counter denying the material averments inter alia contending that the first respondent had violated the terms and conditions of the policy. The amount of compensation claimed by the petitioner under various heads is excessive and exorbitant. Hence the petition may be dismissed.

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

- i. Whether the accident was occurred due to rash and negligent act of R.1 driver cum owner of TATA Indica Car bearing No.AP 7TT 994?
- ii. Whether the petitioner is entitled for claim of compensation< If so, to what amount, and against which of the respondents?
- iii. 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 were marked. On behalf of the respondents no oral evidence was let in, but the copy of the insurance policy was marked as Ex.B.1.

9 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 TATA Indica car bearing No.AP 7 TT 994, which resulted injuries to the petitioner and allowed the petition in part by awarding compensation of Rs.98,000/- with interest at 7.5% p.a from the date of filing of the petition till the date of realisation. Not satisfied with the said amount of compensation awarded by the Tribunal, the petitioner filed the present appeal seeking higher compensation.

10 Heard Sri T. Nagarjun Reddy, the learned counsel for the petitioner, Sri M. Sravan Kumar for the first respondent and Mrs.A.Jayanthi the learned standing counsel for the second respondent.

11 The contention of Sri T. Nagarjun Reddy, the learned counsel for the petitioner is two fold.

i. The Tribunal has not considered the medical bills and discharge summary filed by the petitioner and granted meagre amount of compensation.

ii. The amount of compensation awarded under various heads is not just and reasonable.

11 *Per contra*, the learned counsel for the second respondent submitted that the Tribunal has awarded just and reasonable compensation.

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

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

Point:

13 As per the finding of the tribunal, the accident occurred due to the rash and negligent driving of the driver of the TATA Indica car bearing No.AP 7 TT 994, which resulted injuries to the petitioner.

The respondents did not choose to file appeal or cross objections challenging the finding of the Tribunal on issue No.1. Therefore, the finding of the Tribunal on issue No.1 has become final. The Tribunal has assigned cogent and valid reasons to its findings on issue No.1. I am fully agreeing with the finding of the Tribunal that the accident occurred due to the rash and negligent driving of the driver of the TATA Indica car bearing No.AP 7 TT 994.

14 Even as per the testimony of P.W.1, by the date of accident, he was drawing Rs.3,500/- p.m by working as security guard. The Tribunal arrived at a conclusion that the petitioner might not have attended to his duty for a period of five months and rightly awarded Rs.17,500/- towards loss of income.

15 The petitioner filed medical bills worth of Rs.17,401/- The Tribunal rightly awarded an amount of Rs.19,000/- towards medicines and treatment. As per Ex.A.2 wound certificate, the petitioner sustained grievous injuries. There is no mention in Ex.A.2 that the petitioner sustained four fractures. Even as per the testimony of P.W.2, the petitioner sustained three fractures only. The Tribunal proceeded on a wrong premise as if the petitioner sustained four fractures. But the fact remains that the petitioner sustained only three fractures even as per the testimony of P.W.2.

16 The Tribunal awarded an amount of Rs.60,000/- at the rate of Rs.15,000/- per each fracture. Undoubtedly, the amount awarded by the Tribunal under this head is on higher side. The insurance company has not filed any appeal challenging this aspect. Therefore, it is not fair on the part of this Court to reduce the compensation. The Tribunal also awarded an amount of Rs.1,500/- towards simple injury. Even as per the testimony of P.W.2, the petitioner did not incur simple injury.

17 The petitioner claimed an amount of Rs.15,000/- towards future operation. But the petitioner did not file estimation given by the concerned doctor. In the absence of documentary evidence, it is not safe to place reliance on the oral testimony of P.W.1. The Tribunal rightly rejected the claim of the petitioner on this aspect. The amount of compensation awarded by the Tribunal under various heads is just and reasonable to meet the ends of justice. The Tribunal has assigned cogent and valid reasons to its findings. There are no grounds much less valid grounds to interfere with the well considered judgment and award of the Tribunal. The appeal lacks merits and bonafides.

18 Hence the appeal is dismissed. No order as to costs. As a sequel, miscellaneous petitions, pending in this miscellaneous appeal, if any, shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 24th March, 2015.

Kvsn