

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY
M.A.C.M.A. No.1006 of 2009

JUDGMENT:

1 Dissatisfied with the judgment and award dated 29.12.2008 passed in M.V.O.P.No.107 of 2007 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District & Sessions Judge, Kurnool wherein and whereby an amount of Rs.30,928/- was awarded as compensation as against the claim of Rs.1.00 lakh, 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 02.07.2006 at about 7.00 a.m, the petitioner along with her relatives boarded the auto bearing No.AP-01-U-5633 to go to Eerela Banda village of Mahaboobnagar district. After completion of the work, the petitioner was proceeding to Kurnool and when the auto reached near Narayanapur village limits on N.H.7 road, the driver of the lorry bearing No.MH-12-CT-1353 had driven the same in a rash and negligent manner and hit the auto in which the petitioner was travelling. In connection with the said accident, the Station House Officer, Manopadu police station registered a case in Cr.No.45 of 2006 under Section 338 IPC. By the date of accident the petitioner was aged 28 years and used to earn Rs.100/- per day. Due to the accident, the petitioner sustained fractures and injuries on various parts of the body and took treatment as inpatient in Government General Hospital, Kurnool for a long time and spent huge amount towards medicines and treatment. The lorry bearing No.MH-12-CT-1353 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 severally liable to pay compensation to the petitioner.

5 First respondent remained ex parte. Second respondent filed counter denying the material averments made in the petition, inter alia contending that the accident occurred due to the rash and negligent driving of the driver of the auto bearing No.AP-01-U-5633 and there was no negligence on the part of the driver of the lorry bearing No.MH-12-CT-1353. The petition is not maintainable for non-impleading of the driver, owner and insurer of the auto bearing No.AP-01-U-5633. The first respondent had violated the terms and conditions of the insurance policy. Therefore, there is no obligation on the part of this respondent to indemnify the liability of the first respondent. The amount of compensation claimed by the petitioner under various heads is excessive and exorbitant. Hence the petition may be dismissed.

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

- i. Whether the accident dated 2-7-2006 occurred due to collision in between Auto bearing No.AP-01-U-5633 and lorry bearing No.MH-12-CT-1353?
- ii. Whether the accident dated 2-7-2006 occurred due to rash and negligent driving of the lorry bearing No.MH-12-CT-1353 by its driver resulting in injuries to the petitioner?
- iii. Whether the petitioner is entitled for any compensation and if so to what extent from which of the respondents?
- iv. To what relief?

7 During the course of trial, on behalf of the petitioner P.Ws.1 and 2 were examined and Exs.A.1 to A.4 and X.1 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.

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.MH-12-CT-1353 which resulted injuries to the petitioner and allowed the petition in part by awarding compensation of Rs.30,928/- with interest at 9% p.a from the date of filing of the petition till the date of realisation and directed the respondent Nos.1 and 2 to deposit the same jointly and severally. Hence the present appeal.

9 Respondent Nos.1 and 2 having received notices in this appeal, did not choose to appear. Hence I am inclined to dispose of the appeal on merits.

10 Sri V.Govardhan Reddy, the learned counsel for the petitioner, submitted that the Tribunal has not rightly considered the nature of injuries sustained by the petitioner and awarded meagre amount of compensation. He further submitted that the amount of compensation awarded under various heads is not just and reasonable.

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

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

Point:

12 As per the finding of the tribunal on issue Nos.1 and 2, the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.MH-12-CT-1353, which resulted injuries to the petitioner. The finding of the Tribunal on issue Nos.1 and 2 has become final in view of the non-filing of any appeal or cross –

objections by the respondents. The Tribunal has assigned cogent and valid reasons to its finding on issue Nos.1 and 2. 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 lorry bearing No.MH-12-CT-1353.

13 As per the oral testimony of P.W.1, she sustained fracture to ribs and lacerated injury on the liver. The oral testimony of P.W.2, coupled with Ex.B.3 - discharge summary and Ex.X.1 case sheet reveals that the petitioner was admitted in Government General Hospital, Kurnool on 03.07.2006 and discharged on 17.7.2006. The testimony of P.W.2 clearly reveals that the petitioner underwent operation due to laceration to liver. Liver is a vital part of the human body. Due to fracture to ribs and lacerated injury to liver, the petitioner might have suffered a lot. Taking into consideration the nature of the injuries sustained by the petitioner as well as the duration of period of treatment taken by her, I am inclined to award an amount of Rs.30,000/- towards pain and suffering instead of Rs.20,000/- as awarded by the Tribunal.

14 As per Ex.A.4 medical bills, the petitioner spent an amount of Rs.7,928/- towards medicines. The Tribunal rightly awarded an amount of Rs.7,928/- towards medicines. The petitioner might have taken special diet due to laceration to liver and fracture to ribs. The Tribunal has not awarded any amount towards extra nourishment. Taking into consideration the nature of fracture and injuries sustained by the petitioner, I am inclined to award an amount of Rs.3,000/- towards extra nourishment.

15 Due to fracture to ribs and injury to liver, the petitioner might not have attended to her work for a period of three months including the period of treatment. The petitioner may earn Rs.3,000/- p.m.

even by attending cooli work. Hence, I am inclined to award an amount of Rs.9,000/- towards loss of earnings instead of Rs.3,000/- as awarded by the Tribunal.

16 Thus, the total compensation, which the petitioner is entitled to, would come as under:

<u>Pain and suffering:</u>	<u>Rs.30,000/-</u>
<u>Medicines:</u>	<u>Rs. 7,928/-</u>
<u>Extra nourishment:</u>	<u>Rs. 3,000/-</u>
<u>Loss of earnings during the</u>	
<u>Period of treatment:</u>	<u>Rs. 9,000/-</u>
	<u>=====</u>
<u>TOTAL</u>	<u>Rs.49,928/-</u>
	<u>=====</u>

17 The amount of compensation awarded under various heads is just and reasonable. The petitioner is also entitled to interest at 7.5% p.a. on the enhanced amount of compensation i.e. Rs.19,000/- from the date of filing of the petition till the date of realization. The point is answered accordingly.

18 In the result, the appeal is partly allowed enhancing the compensation from Rs.30,928/- to Rs.49,928/- with interest at 7.5% p.a. on the enhanced compensation i.e. Rs.19,000/- from the date of filing of the petition till the date of realisation. However, the petitioner is entitled to interest at 9% p.a. as awarded by the Tribunal on Rs.30,928/-. The respondent Nos.1 and 2 are hereby directed to the deposit the amount of compensation jointly and severally. Parties are directed to bear their own costs in this appeal. As a sequel, the miscellaneous petitions, pending in this appeal, if any, shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 24th March, 2015.

Kvsn