

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A.No.1054 of 2009

JUDGMENT:

1 Dissatisfied with the amount of compensation awarded by judgment and award dated 30.08.2008 passed in M.V.O.P.No.436 of 2006 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-IV Additional District & Sessions Judge, Guntur, wherein and whereby an amount of Rs.51,937/- 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 10.01.2005 the petitioner along with his family members was proceeding to railway station in an auto bearing No.AP 7 TT 4491. When the auto reached near 2/14, Brodipet, Guntur, the first respondent had driven the motorcycle bearing No.AP 27 G 9703 in a rash and negligent manner and dashed against the auto in opposite direction. In connection with the said accident, a case in Cr.No.9 of 2006 was registered against the rider of the motorcycle under Section 338 of IPC. Due to the accident, the petitioner sustained fractures and took treatment in various hospitals and spent huge amounts towards treatment and medicines. By the date of accident, the petitioner was aged 60 years and used to earn Rs.4,000/- p.m. as driver. The auto bearing No.AP 7 TT 4491 which belongs to the first respondent was insured with the second respondent and the motorcycle bearing No.AP 27 G 9703 which belongs to the third respondent, was insured with the fourth respondent. Therefore, the respondent Nos.1 to 4 are jointly and severally liable to pay

compensation of Rs.2.00 lakhs to the petitioner.

5 Third respondent remained *ex parte*. First respondent filed written statement 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. The rider of the motorcycle was having valid and effective driving licence as on the date of accident. The motorcycle was insured with the second respondent - insurance company and hence the second respondent alone is liable to pay compensation, if any, to the petitioner.

6 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 auto bearing No.AP 7 TT 4491 and there was no negligence on the part of the rider of the motorcycle. The amount of compensation claimed by the petitioner under various heads is excessive and exorbitant. Hence the petition may be dismissed as against this respondent.

7 Fourth 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 rider of the motorcycle and there was no negligence on the part of the driver of the auto. This respondent is not liable to pay compensation to the petitioner unless the petitioner proves that the driver of the auto was having valid driving licence as on the date of accident. The amount of compensation claimed by the petitioner under various heads is excessive and exorbitant. Hence the petition may be dismissed.

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

- i. Whether the accident took place due to rash and negligent driving of the driver of the motorbike

bearing No.AP 27 G 9703, 2) auto rickshaw
bearing No.AP 7 TT 4491?

ii. Whether the petitioner is entitled for the
compensation and if so what amount and from
which of the respondents?

iii. To what relief?

9 During the course of trial, on behalf of the petitioner P.Ws.1
and 2 were examined and Exs.A.1 to A.9 and Ex.X.1 were marked.
On behalf of the respondents no oral or documentary evidence was
let in.

10 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 Auto bearing No.AP 7 TT 4491 as well as the rider of the
motorcycle bearing No.AP 27 G 9703 in the ratio of 50 : 50 and
allowed the petition in part by awarding compensation of Rs.51,937/-
with interest at 7.5% p.a from the date of filing of the petition till the
date of realisation and apportioned the liability between the
respondent Nos.1 and 2 on one hand and respondent Nos.3 and 4 on
the other in the ratio of 50 : 50. Being dissatisfied with awarding of
said amount of compensation, the petitioner filed the present appeal.

11 Heard Sri B. Parameswara Rao, the learned counsel for the
petitioners and Sri E.V.V.S. Ravi Kumar, the learned counsel for the
second respondent and Sri B. DEvanand, the learned counsel for the
fourth respondent.

12 The learned counsel for the petitioner submitted that the
amount of compensation awarded by the Tribunal under various
heads is not just and reasonable.

13 On the other hand, the learned counsel for the respondent

Nos.2 and 4 submitted that the amount of compensation awarded by the Tribunal is just and reasonable.

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

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

Point:

15 As per the finding of the tribunal, the accident occurred due to the rash and negligent driving of the driver of the auto bearing No.AP 7 TT 4491 as well as the rider of the motorcycle bearing No.AP 27 G 9703 in the ratio of 50 : 50. The finding recorded by the Tribunal on issue No.1 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 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 auto bearing No.AP 7 TT 4491 as well as the rider of the motorcycle bearing No.AP 27 G 9703 in the ratio of 50 : 50.

16 As per the oral testimony of P.W.1, due to the accident he sustained fractures. As per the evidence of P.W.2, the petitioner sustained fracture to 6, 7 and 8 ribs and D.12, L.1 and L.2 of vertebra. The oral testimony of P.Ws.1 and 2 coupled with Ex.A.2 and A.4 reveals that the petitioner sustained two fractures. The Tribunal awarded Rs.20,000/- towards pain and suffering. However, taking into consideration the nature of fractures sustained by the petitioner, I am inclined to award an amount of Rs.25,000/- towards pain and suffering instead of Rs.20,000/- as awarded by the Tribunal.

17 The Tribunal has rightly awarded an amount of Rs.5,937/- towards medical bills. As per Ex.A.5 – inpatient bill, the petitioner spent an amount of Rs.4,950/- in the hospital. Hence I am inclined to

award an amount of Rs.5,000/- towards treatment in the hospital.
The Tribunal has rightly awarded an amount of Rs.25,000/- under no
fault liability.

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

<u>Pain and suffering:</u>	<u>Rs.25,000/-</u>
<u>Medicines:</u>	<u>Rs. 5,937/-</u>
<u>Treatment in hospital:</u>	<u>Rs. 5,000/-</u>
<u>No fault liability:</u>	<u>Rs.25,000/-</u>
	<u>=====</u>
<u>TOTAL</u>	<u>Rs.60,937/-</u>
	<u>=====</u>

19 The amount of compensation awarded under various heads is
just and reasonable. The point is answered accordingly.

20 In the result, the appeal is partly allowed enhancing the
compensation from Rs.51,937/- to Rs.60,937/- with interest at 7.5%
p.a. throughout. The respondent Nos.1 and 2 on one hand and
respondent Nos.3 and 4 on the other are hereby directed to the
deposit the amount of compensation together with interest as stated
above, jointly and severally in the ratio of 50 : 50 i.e. respondent
Nos.1 and 2 shall deposit Rs.30,468/- and respondent Nos.3 and 4
shall deposit Rs.30,468/-. 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: 25th March, 2015.

Kvsn