

HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A. No.1109 of 2009

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act by the claimant challenging the judgment and award dated 31.10.2008 passed in M.V.O.P. No.1117 of 2006 on the file of the Motor Accidents Claims Tribunal-cum-IV Additional District Judge, F.A.C., XI Additional District Judge (Fast Track Court), Guntur at Tenali.

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 petition, in brief, are as follows: On 24.9.2006, in the morning hours, the petitioner was proceeding to Nagendra Swamy Temple situated at Konetipuram from China Pulivarru village on motor cycle bearing No.AP 7 AD 943. At about 11.15 A.M., when he reached near Kotipalli, the driver of bus bearing No.AP 27U 6449 had driven the same in a rash and negligent manner and dashed the motor cycle of the petitioner. The accident occurred due to the rash and negligent driving of the driver of the bus against whom the Station House Officer, Bhattiprolu Police Station registered a case in Crime No.102 of 2006 under Section 337 IPC. Due to the accident, the petitioner sustained grievous injuries on his right leg, left leg and took treatment as inpatient in Katuru Hospital as well as N.R.I. Hospital, China Kakani. The petitioner spent an amount of Rs.40,000/- towards medicines and treatment. By the time of the accident, the petitioner was a student. The bus bearing No.AP 27U 6449, which belongs to the first respondent, was insured with the second respondent with effect from 15.10.2005 to 14.10.2006. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.2,50,000/- to the petitioner with interest and costs.

4. The first respondent filed counter denying all the averments made in the petition *inter alia* contending that the accident occurred due to negligent driving of the motor cycle by the petitioner and there was no negligence on the part of the driver of the bus. The driver of the bus was having valid and effective driving licence as on the date of the accident. The amount of compensation claimed by the petitioner, under various heads, is highly excessive and exorbitant. The bus, which belongs to this respondent, was insured with the second respondent with effect from 15.10.2005 to

14.10.2006 and therefore the second respondent alone is liable to pay compensation, if any, to the petitioner. Hence, the petition may be dismissed against this respondent.

5. The second respondent filed counter denying all the averments made in the petition *inter alia* contending that the accident occurred due to the rash and negligent driving of the rider of the motor cycle and there was no negligence on the part of the driver of the bus. The petition is not maintainable for non-impleading of A.P.S.R.T.C. The amount of compensation claimed by the petitioner, under various heads, is highly excessive and exorbitant. Hence, the petition is liable to be dismissed so far as this respondent is concerned.

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

1. Whether the accident took place due to rash and negligent driving of the driver of the bus bearing No.AP 27U 6449?
2. Whether the petitioner is entitled to claim compensation, if so, to what amount and from which of the respondents?
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 A10 and X1 were marked. On behalf of the respondents, no oral or documentary evidence was adduced.

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 bus, which resulted in injuries to the petitioner, and allowed the petition in part by awarding compensation of Rs.1,02,236/- with interest at 7.5% per annum from the date of petition till the date of deposit, directing the respondent Nos.1 and 2 to pay the compensation. Dissatisfied with the quantum of compensation awarded by the Tribunal, the claimant preferred the present appeal.

9. Heard Sri B.Parameswara Rao, learned counsel for the appellant – claimant and Sri Nimmagadda Satyanarayana, learned counsel for the first respondent. The second respondent having received the notice, in this appeal, did not choose to appear.

10. Learned counsel for the claimant submitted that the Tribunal has not considered various documents filed by the petitioner and awarded meager amount. He further submitted that the Tribunal has also not considered the oral testimony of P.W.2 and

recitals of Ex.A8 disability certificate. *Per contra*, learned counsel for the first respondent submitted that the first respondent has not violated the terms and conditions of the policy and therefore, the second respondent alone, is liable to pay compensation, if any, to the petitioner.

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?

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Point:

12. As per the finding of the Tribunal, the accident occurred due to the rash and negligent driving of the driver of the bus, which resulted in injuries to the petitioner. The finding recorded by the Tribunal, on issue No.1, became final in view of non-filing of appeal or cross-objections by respondent Nos.1 and 2. The Tribunal has assigned cogent and valid reasons to its finding 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 the bus, which resulted in injuries to the petitioner.

13. The oral testimony of P.W.1 coupled with Ex.A2 wound certificate reveals that the petitioner sustained crush injury to right foot. As per the oral testimony of P.W.2 – Doctor, the petitioner was admitted in N.R.I. Hospital, China Kakani on 25.4.2006 and discharged on 22.11.2006. His testimony further reveals that the petitioner underwent skin grafting on 14.10.2006 and 29.10.2006. Due to the crush injuries and skin grafting, the petitioner might have suffered a lot. Taking these circumstances into consideration, I am inclined to award an amount of Rs.20,000/- towards pain and suffering instead of Rs.15,000/- as awarded by the Tribunal. Basing on the oral testimony of P.W.2 and Exs.A9 and A10 – medical prescriptions and bills, the Tribunal awarded an amount of Rs.38,236/- towards medicines. Taking into consideration the nature of fracture sustained by the petitioner, I am inclined to award an amount of Rs.4,000/- towards extra nourishment. I am also inclined to award Rs.2,000/- towards transportation charges.

14. The oral testimony of P.W.2 coupled with Ex.A8 reveals that the petitioner incurred 40% disability. In the cross-examination, P.W.2 in unequivocal terms

deposed that the petitioner can successfully walk, but he cannot walk with bare foot. The oral testimony of P.W.2 clearly reveals that the so-called disability may not affect the earning capacity of the petitioner. Taking into consideration the nature of fracture sustained by the petitioner, the Tribunal awarded an amount of Rs.50,000/- towards permanent disability. Thus, the compensation awarded to the petitioner, under various heads, is as follows:

	Rs.
1. Pain and suffering	20,000
2. Medical expenses	38,236
3. Extra nourishment	4,000
4. Transportation charges	2,000
5. Loss of future amenities	50,000
TOTAL	1,14,236/-

The compensation awarded to the petitioner, as above, is just and reasonable to meet the ends of justice. The petitioner is also entitled to interest at 7.5% per annum. Accordingly, the point is answered.

15. In the result, the appeal is allowed in part enhancing the compensation from Rs.1,02,236/- to Rs.1,14,236/- (Rupees One lakh fourteen thousand two hundred and thirty six only). The respondent Nos.1 and 2 shall jointly and severally pay the same with proportionate costs and interest at 7.5% per annum from the date of petition till the date of deposit. The respondent Nos.1 and 2 are directed to deposit the same within a period of two months from the date of receipt of a copy of this order. As a sequel, the miscellaneous petitions, pending in this appeal, if any, shall stand closed.

T.SUNIL CHOWDARY, J

Date: 31.3.2015

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