

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.1002 OF 2009

JUDGMENT:

This appeal is preferred by the appellant/petitioner challenging the judgment and award, dated 19.09.2006 passed in O.P.No.405 of 2002 on the file of the Motor Accidents Claims Tribunal-cum-IV Additional District Judge (FTC), Mahabubnagar (for short, 'the Tribunal').

2. For the sake of convenience, the parties are hereinafter referred to as they are arrayed in the O.P. before the Tribunal.

3. The facts leading to filing of the present appeal are, briefly, as follows:

On 17.04.2002, the petitioner and others have engaged the Jeep bearing No.AP 1U 555 to attend marriage function at Varkoor. In the return journey, when the jeep reached near Surya Jyothi Cotton Mill, the driver of the Lorry bearing No.KA 22 B 4444 came in a rash and negligent manner and hit the jeep. The accident occurred due to the rash and negligent driving of the driver of the lorry, against whom the Station House Officer, Makthal Police Station registered a case in Crime No.28 of 2002 for the offences punishable under Sections 304-A and 338 I.P.C. By the time of accident, the deceased was aged about 32 years and used to earn Rs.2,000/- per month as Milk Vendor. Due to injuries, the petitioner could not attend his work for long time and thereby, lost his income. Hence, the petition.

4. Respondent No.1 remained *ex-parte*. Respondent No.2 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 driver of the jeep and there was no negligence on the part of the driver of the lorry. The amount of compensation claimed by the petitioner under various heads is highly excessive and exorbitant. Hence, the petition may be dismissed.

5. 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 the Lorry bearing No.KA-22-B-4444?
2. Whether the petitioner is entitled to claim compensation from the respondents, and if so, to what amount and against whom?

3. To what relief?

6. During the course of trial, on behalf of the petitioner, PW.1 was examined and Exs.A.1 to A.4 were marked. On behalf of the contesting respondent, no oral or documentary evidence was adduced.

7. Basing on 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 which resulted in injuries to the petitioner and allowed the petition in part by awarding compensation of Rs.4,000/- as against the claim of Rs.50,000/-.

8. Feeling aggrieved by the judgment and award of the Tribunal, the petitioner preferred the present appeal.

9. Heard Sri K.Venkatesh Gupta, the learned counsel for the appellant/petitioner. In spite of service of notice, none appeared on behalf of the respondents.

10. The contention of the learned counsel for the petitioner is that the Tribunal has not considered various documents filed by the petitioner and awarded meagre amount.

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. As per the finding of the Tribunal, the accident occurred due to the rash and negligent driving of the driver of the lorry which resulted in injuries to the petitioner. The finding recorded by the Tribunal became final in view of non-filing of regular appeal or cross objections by the respondents. 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 lorry which resulted in

injuries to the petitioner.

13. As per the oral testimony of PW.1, he sustained grievous injury on left upper arm and on left side shoulder and took treatment as inpatient for two days in Government General Hospital, Mahabubnagar. A perusal of Ex.A.2 – Certified Copy of Wound Certificate reveals that the petitioner sustained one injury on upper arm 3 cm x 2.5 cm. A perusal of the record also reveals that at the advice of the doctors, the petitioner has taken X-ray. Admittedly, the petitioner took treatment as inpatient for a period of two days. The petitioner might not have attended to his work for a period of one week. Having regard to the facts and circumstances of the case, I am of the considered view that awarding of compensation of Rs.10,000/- under various heads is just and reasonable to meet the ends of justice and the amount of compensation awarded by the Tribunal is on lower side.

14. In the result, the Appeal is allowed in part by enhancing the quantum of compensation from Rs.4,000/- to Rs.10,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. Respondent Nos.1 and 2 are jointly and severally liable to pay compensation amount. There shall be no order as to costs.

15. Consequently, Miscellaneous Petitions, if any, pending in this Appeal shall stand closed.

T.SUNIL CHOWDARY, J

Date: 24.03.2015

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