

HON'BLE SMT JUSTICE ANIS

CIVIL MISCELLANEOUS APPEAL No.2740 of 2004

J U D G M E N T:

This appeal is filed by the appellant/petitioner under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the award dated 10.12.2003 passed by the District Judge-cum-Chairman, Motor Vehicle Claims Tribunal, Vizianagaram, in M.O.P.No.498 of 2002, awarding compensation of Rs.30,000/-.

2. The appellant/petitioner filed the above M.O.P claiming compensation of Rs.1,00,000/- on account of the injuries sustained by him in a motor vehicle accident that occurred on 23.10.2001.

3. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the Original Petition.

4. The brief averments made in the petition are that on the date of accident at about 1:15 p.m, the petitioner was travelling in a rickshaw from Primary Health Centre, Nellimarla village to Ramatheertham junction. When the rickshaw reached near Ramatheertham junction the first respondent, who is the driver of the Lorry bearing No.AEV.2016, drove the vehicle in a rash and negligent manner and dashed the rickshaw. As a result, the petitioner sustained injuries. Immediately after the accident, the petitioner was shifted to Government Hospital, Vizianagaram for treatment. The police, Nellimarla Police Station, registered the case in Cr.No.95 of 2001 against the first respondent. Thus, the petitioner claimed Rs.1,00,000/- towards compensation against the respondents as they are jointly and severally liable to him.

5. Before the Tribunal, the first and second respondents remained *ex parte*.

6. The brief averments made in the counter filed by the third respondent are as follows:

The third respondent put the petitioner to prove the manner of accident, age and income of the petitioner and also injuries received by him in the motor vehicle accident. The third respondent specifically stated that the petitioner should prove that the first respondent was having valid and effective driving license and the policy was subsisting at the time of accident. The third respondent also stated that the claim of compensation is very high and excessive and finally prayed the Court to dismiss the petition.

7. As the petitioner has suffered injuries in the accident along with others, the case of the petitioner was clubbed along with other cases of the persons, who sustained injuries in the same accident, and tried jointly.

8. Basing on the above pleadings, the Tribunal framed four issues and to substantiate the claim, the petitioner along with others got examined PWs.1 to 4 (petitioner was examined as PW.3) and got marked Exs.A.1 to A.13 and Exs.X1 & X2 on their behalf. On behalf of the respondent, no oral or documentary evidence was adduced.

9. After considering the oral and documentary evidence, the Tribunal having held that the accident occurred due to rash and negligent driving of the driver of the Lorry bearing No.AEV.2016, in which the petitioner sustained grievous injuries, awarded compensation of Rs.30,000/- along with interest at 9% p.a to the petitioner against the respondents.

10. Being not satisfied with the award passed by the Tribunal, the petitioner preferred the present appeal.

11. The learned counsel appearing for the appellant/ petitioner argued that the Tribunal has not considered the loss of earnings of the petitioner during the hospitalization period and also subsequent period; that the Tribunal has not granted reasonable compensation for pain and sufferings, disability, transportation and extra nourishment and the Tribunal without considering the evidence on record awarded meagre compensation of Rs.5,000/- for five simple injuries and Rs.15,000/- towards disability and the said amount is very less and therefore, prayed the court to enhance the compensation.

12. The respondents had not adduced any evidence before the Tribunal. Therefore, when the notice was served on them, none represented.

13. Having regard to the submissions made by the learned counsel appearing for the petitioner, the points which are to be decided in this appeal are as follows:

1. Whether the compensation awarded by the Tribunal is just and reasonable?
2. Whether the appellant/petitioner is entitled for enhancement of compensation as prayed for?

14. **P O I N T S:** After perusing the oral and documentary evidence, there is no dispute about the fact that the accident was caused due to rash and negligent driving of the driver of the Lorry bearing No.AEV.2016.

15. So far, the quantum of compensation is concerned, to prove the case, the petitioner was himself examined as PW.3. PW.3 stated that in the accident, he sustained simple and grievous injuries and filed wound certificate-Ex.A9 and X-ray-Ex.A12 to that effect. A perusal of the wound certificate-Ex.A9 shows that he

sustained one grievous injury and five simple injuries. Further, the perusal of the X-ray-Ex.A12 shows that he sustained fracture to his right femur. Admittedly, the petitioner has taken treatment in the Government Hospital, Vizianagaram. PW.4 is the doctor, who treated PW.3 in the hospital. PW.4 stated that the petitioner has sustained fracture injury and X-ray shows mal-united double fracture. He assessed the disability of the petitioner as 20%. A perusal of the findings of the Tribunal shows that the Tribunal awarded Rs.5,000/- for one grievous injury and Rs.5,000/- towards five simple injuries. Further, the Tribunal awarded only Rs.15,000/- for the disability suffered by the petitioner and Rs.5,000/- towards medicines, transportation and extra nourishment.

16. It is no doubt, as per the evidence of PW.4, petitioner sustained one fracture, one grievous injury and five simple injuries and due to the said injuries, the petitioner must have suffered pain and inconvenience. He was about 10 days in the hospital by undergoing treatment. Though the treatment in the Government hospital is free of cost, but for the grievous injury, petitioner must have purchased some medicines from outside. Therefore, considering all these aspects, the petitioner is entitled for Rs.10,000/- towards one grievous injury and Rs.10,000/- towards five simple injuries. Further, the petitioner is entitled for Rs.5,000/- towards pain and sufferings and Rs.5,000/- towards medicines. It is no doubt the petitioner is a brick maker and during the hospitalisation, he would not have done any work due to the grievous injury sustained by him. Therefore, the Tribunal without considering these aspects has not granted any compensation under the head of loss of earnings. If the petitioner is a labourer, he must have earned Rs.100/- to Rs.200/- per day in the year 2001. Therefore, an amount of Rs.5,000/- is awarded for the loss

of earnings for one month and further, the petitioner is also entitled for Rs.25,000/- towards disability suffered by him in view of fracture as per Ex.A13-disability certificate. Further, an amount of Rs.5,000/- is awarded towards transportation and extra nourishment and thus, the petitioner is entitled for a total amount of Rs.65,000/- towards just and reasonable compensation.

17. In view of the above discussion, the appeal is partly allowed enhancing the compensation awarded by the Tribunal to the appellant from Rs.30,000/- to Rs.65,000/-. No order as to costs.

18. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

ANIS, J

Date: 29.06.2015

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