

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY
CMA No.2997 OF 2004

JUDGMENT:

1 Dissatisfied with the amount of compensation awarded in O.P.No.666 of 1995 on the file of Chairman, Motor Accidents Claims Tribunal-cum- Additional District Judge, Nizamabad, wherein and whereby an amount of Rs.70,000/- was awarded as against a claim of Rs.2.00 lakhs, by the judgment and award dated 19.09.2003 the claimant has filed the present appeal.

2 For the sake of convenience, the parties to this appeal are hereinafter referred to as they are arrayed before the Tribunal.

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

4 On 06.03.1995 the petitioner and others were proceeding from Hyderabad towards Nirmal on a car bearing No.APU 7300. When the car reached near Kupriyal bus stand, the driver of the lorry bearing No.AP 16 T 1197 i.e. second respondent herein had driven the same in a rash and negligent manner and dashed against the car. The accident occurred due to the rash and negligent driving of the driver of the lorry. In connection with the said accident, the police concerned registered a criminal case against the driver of the lorry. Due to the accident, the petitioner sustained grievous injuries on various parts of

his body. The petitioner took treatment as inpatient in Government General Hospital, Kamareddy and also in a private hospital at Nizamabad. The petitioner spent huge amount towards medicines and treatment. Due to the injuries, the petitioner could not attend his work, thereby lost his income. As on the date of accident, the lorry bearing No.AP 16 T 1197, which belongs to the first respondent, was validly insured with the third respondent. Hence the petitioner filed claim petition seeking compensation of Rs.2.00 lakhs contending that all the respondents are jointly and severally liable to pay compensation to him.

5 Respondent Nos.1 and 2 remained ex parte. Third respondent filed written statement denying the material averments made in the petition, inter *alia* contending that the accident occurred due to the negligent driving of the driver of the car and that there was no negligence on the part of the second respondent. The petitioner sustained only simple injuries and that the amount of compensation claimed by the petitioner under various heads is highly excessive and exorbitant. The present petition is not maintainable for non-impleading of the driver, owner and insurer of car. Therefore, the petition is liable to be dismissed.

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

- i. Whether the accident was due to rash and

negligent driving of the lorry bearing No.AP-16-T-1197 by its driver only?

- ii. Whether the petitioner is entitled for compensation. If so, to what amount and from which of the respondents?
- iii. 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.7 were marked. No oral or documentary evidence was adduced on behalf of the respondents.

8 The Tribunal, after appreciating the oral, documentary evidence and other material available on record, held that the accident occurred due to the rash and negligent driving of the driver of the lorry i.e. second respondent and allowed the petition in part by granting Rs.70,000/- as compensation to the petitioner. As stated supra, dissatisfied with the amount of compensation awarded by the tribunal, the claimant filed the present appeal.

9 The learned counsel for the petitioner submitted that the Tribunal has not appreciated the oral testimony of P.W.2 and the recitals of Ex.A.7 disability certificate in right perspective. He further submitted that the amount of compensation awarded by the Tribunal is too meager.

10 *Per contra*, the learned counsel for the third respondent submitted that the Tribunal considered the discrepancy between Ex.A.2 - Injury Certificate, Ex.A.3 -

Discharge Summary and Ex.A.7 - Disability Certificate in right perspective. He further submitted that there is no nexus to the injuries sustained by the petitioner as mentioned in Exs.A.2 and A.3 and the nature of fractures mentioned in disability certificate – Ex.A.7.

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

"Whether the Tribunal has awarded fair, just and reasonable compensation or not?"

Point:

12 The finding of the Tribunal that the accident occurred due to rash and negligent driving of the driver of the lorry bearing No.AP 16 T 1197 became final in view of non-filing of any appeal or cross objections by the third respondent. Hence I am of the considered view that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.AP 16 T 1197 which resulted injuries to the petitioner.

13 The oral testimony of P.w.1 coupled with Exs.A.2 and A.3 reveals that the petitioner sustained one fracture to parietal bone and two simple injuries. Taking into consideration the nature of fracture and the injuries sustained by the petitioner, the Tribunal awarded an amount of Rs.60,000/- as compensation to him. It appears that an amount of Rs.60,000/- was awarded towards pain and suffering. After scrutinizing the medical bills, the Tribunal awarded an amount of Rs.5,000/-

towards medicines and extra nourishment. The Tribunal also awarded an amount of Rs.5,000/- towards past and future pain. In total, the Tribunal awarded a total sum of Rs.70,000/- as compensation under different heads.

14 The oral testimony of P.W.2-Doctor coupled with Ex.A.7 – disability certificate reveals that the petitioner sustained 40% disability. It is an admitted fact that the petitioner did not sustain fracture to legs. There is no connection between Exs.A.2, A.3 and A.7. In order to help the claimant/injured persons, possibility of issuing this type of disability certificates cannot be ruled out. If the Tribunal or this Court places any reliance on this type of certificates, certainly, it would amount to miscarriage of justice. The Tribunal considered various aspects in correct perspective and has rightly discarded Ex.A.7. I am fully agreeing with the findings of the Tribunal so far as the validity of Ex.A.7 – disability certificate is concerned.

15 A perusal of the record reveals that the Tribunal has awarded just and reasonable compensation to the petitioner. Hence there are no grounds much less valid grounds to interfere with the judgment and award passed by the Tribunal. The appeal lacks merits and bonafides.

16 Accordingly, this appeal is dismissed. As a sequel, miscellaneous petitions, pending in this appeal, if any, shall stand closed. No order as to costs.

T.SUNIL CHOWDARY, J.

Date: 30th June, 2015.

Kvsn