

HON'BLE SMT JUSTICE ANIS

CIVIL MISCELLANEOUS APPEAL No.2629 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 18.01.2001 passed by the I Additional District Judge-cum-Chairman, Motor Vehicle Claims Tribunal, Nalgonda, in O.P.No.464 of 1998, awarding compensation of Rs.16,500/-.

2. The appellant/petitioner filed the above 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 23.06.1998.

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 23.06.1998, the petitioner along with another were proceeding on a Suzuki motorcycle bearing No.AP.16.C.1210 from Kote Maisamma Temple towards Miryalaguda on the left side of the road. The petitioner was driving the motorcycle by observing the traffic rules. When they reached near Samyagoni Thanda Busstage at about 4:30 P.M, one Jeep bearing No.AP.9.8172 coming from opposite side driven by its driver at high speed dashed the motorcycle. Due to the sudden impact the petitioner and another, who are travelling on the motorcycle, sustained grievous injuries. Immediately the petitioner and other injured person were shifted to Government Hospital, Miryalguda for treatment. Police, Miryalaguda Police Station, registered the case in Cr.No.87 of 1998 for the offence punishable under Section 337 I.P.C against the driver of the Jeep bearing No.AP.9.8172. The petitioner stated that prior to the accident, he was hale and healthy and energetic

and was earning Rs.2,500/- p.m by doing business. He used to contribute the entire amount to his family. The petitioner has no other source of properties except his earnings. Due to the said accident, the petitioner received fracture of right hand and left hand, fracture of right leg and other grievous injuries. After the accident, the petitioner took rest for about two or three months and also undergone treatment in the private hospitals at Nalgonda and Miryalaguda. Due to the injuries, the petitioner was unable to do any work, unable to stand for a long period and unable to lift any weight. Therefore, prayed the Court to grant compensation of Rs.1,00,000/- for the injuries sustained by him in the motor vehicle accident.

5. Before the Tribunal, the first respondent remained *ex parte*.

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

The second respondent put the petitioner to prove the manner of accident, age and income of the petitioner and injuries sustained by him. The respondent denied that petitioner sustained grievous injuries and took treatment by spending huge amounts. It is further specifically contended that the driver of the jeep was not having valid driving license at the time of accident. As such, the Insurance Company is not liable to pay any compensation. The respondent also stated that the petition is bad for non-joinder of necessary parties as there is contributory negligence on the part of the petitioner, who was driving the motorcycle at the time of accident and that the compensation claimed by the petitioner is high and excessive and prayed the Court to dismiss the petition.

7. As the petitioner has suffered injuries in the accident along

with another, the case of the petitioner was clubbed along with O.P.No.506 of 1998 and tried jointly.

8. Basing on the above pleadings, the Tribunal framed three issues and to substantiate the claim, the petitioner along with another got examined PWs.1 & 2 (petitioner was examined as PW.2) and got marked Exs.A.1 to A.14 on their behalf. On behalf of the contesting respondent, no oral evidence was adduced, but Ex.B1 Insurance Policy was got marked with consent.

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 Jeep awarded compensation of Rs.16,500/- along with interest at 12% 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 without considering the grievous injuries suffered by the petitioner granted a meagre amount; that the petitioner sustained grievous injuries and he was hospitalized for a considerable period for the treatment and the compensation awarded under various heads is very less and therefore, prayed the court to enhance the compensation.

12. The appeal against the first respondent was dismissed for default vide C.O. dated 07.11.2003.

13. On the other hand, the learned counsel appearing for the second respondent argued that the Tribunal after considering the oral and documentary evidence passed the award by granting just

and reasonable compensation; that the said finding needs no interference and prayed the Court to dismiss the appeal.

14. Having regard to the submissions made by the learned counsel appearing for both the parties, 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?

15. **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. Therefore, the Tribunal held that the accident occurred due to rash and negligent driving of the driver of the Jeep and the said order becomes final.

16. So far, the quantum of compensation is concerned, a perusal of the evidence of PW.1 shows that he was doing fish business; that his entire family depends on his income; that he does not have any source of income and he used to earn Rs.2,500/- p.m. Due to the accident, he was bed ridden and unable to do any work. A perusal of Ex.A10-wound certificate shows that the petitioner sustained two grievous injuries and one simple injury. Considering the said injuries, an amount of Rs.5,000/- for each grievous injury i.e., Rs.10,000/- for two injuries and Rs.2,500/- for simple injury are awarded to the petitioner. Further for the grievous injury, the petitioner must have suffered pain and sufferings. Therefore, an amount of Rs.5,000/- is awarded for pain and sufferings. During the hospitalisation period, the petitioner must have spent some amount for purchasing medicines. He purchased medicines by way of Ex.A14-bunch of medical bills.

Considering Ex.A14, an amount of Rs.6,000/- is awarded towards the purchase of medicines. After the accident the petitioner was admitted in the Government Hospital, Miryalguda and took treatment. For that period, the petitioner is entitled for transportation charges of Rs.5,000/- and an amount of Rs.2,500/- towards extra nourishment. According to PW.1, he was doing fish business and he is the sole bread winner of the family and as per Ex.A10, he suffered two grievous injuries one is on his right hand near upper arm and another injury on his right leg. Therefore, for these injuries, he must have suffered inconvenience and unable to do any work till he recover from her ailment. Therefore, considering his evidence on record an amount of Rs.2,500/- is awarded for the loss of income. Thus, the petitioner is entitled for compensation of Rs.33,500/- in total for the injuries sustained by him.

17. As seen from Ex.B1 Insurance Policy, the policy was in force and there was coverage of policy at the time of accident. Therefore, both the respondents being the owner and insurer of the Jeep bearing No.AP.9.8172 are jointly and severally liable to pay compensation to the petitioner.

18. In view of the above discussion, the appeal is partly allowed enhancing the compensation awarded by the Tribunal to the appellant from Rs.16,500/- to Rs.33,500/- along with interest at 7.5% p.a on the enhanced amount from the date of the appeal till the date of realisation. No order as to costs.

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

ANIS, J

Date: 29.06.2015
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