

HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.1661 of 2004

ORDER:

This appeal is filed under Section 173 of the Motor Vehicles Act, challenging the judgment and award dated 22.4.2004 passed in O.P. No.125 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Madanapalle.

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

3. The facts leading to filing of the present appeal are as follows: The petitioner filed the O.P. under Section 166(1) of the Motor Vehicles Act claiming a compensation of Rs.4,00,000/- alleging that she sustained injuries in a motor vehicle accident that occurred on 17.4.2001 due to the rash and negligent driving of the driver of lorry bearing No.AP 21T 5166. By the time of the accident, the petitioner was aged about 30 years and used to earn Rs.4,500/- per month. The lorry bearing No.AP 21T 5166, which belongs to the first respondent, was insured with the second respondent—Insurance Company as on the date of the accident; therefore, respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioner.

4. The first respondent remained ex parte. The second respondent filed counter denying all the averments made in the petition including the manner of the accident, age and income of the petitioner. The petitioner is not entitled to claim compensation unless she establishes that the driver of the lorry bearing No.AP 21T 5166 was having valid and effective driving licence. The amount of compensation claimed, under various heads, is highly excessive and exorbitant.

5. Basing on the rival contentions, the Tribunal framed three issues. During the course of enquiry, the petitioner examined herself as P.W.1 and got marked Exs.A1 to A12. On behalf of the respondents, no oral

evidence was adduced but Ex.B1 was marked on behalf of the second respondent.

6. On appraising the oral and documentary evidence available on record, the Tribunal arrived at the conclusion that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.AP 21T 5166, which resulted in injuries to the petitioner, and allowed the petition in part by awarding a compensation of Rs.1,67,000/- with interest at 9% per annum from the date of the petition till the date of realization. Feeling aggrieved by the judgment and award, the claimant preferred the appeal.

7. The contention of learned counsel for the petitioner is three fold:

- (1) the finding of the Tribunal that by the time of the accident, the petitioner was earning Rs.1,000/- per month is not sustainable;
- (2) the Tribunal failed to consider that the petitioner is not in a position to attend any work; therefore, the loss of earning capacity of the petitioner shall be 100% and not 55%;
- (3) the findings recorded by the Tribunal are based on assumptions and presumptions.

Per contra, learned counsel for the second respondent submitted that the Tribunal rightly considered oral and documentary evidence and arrived at the conclusion that the petitioner may earn Rs.1,000/- per month. She further submitted that the Tribunal has awarded just and reasonable compensation; therefore, there are no grounds much less valid grounds to interfere with the judgment and award of the Tribunal.

8. Basing on the rival contentions, the following points that arise for consideration in this appeal are:

- (1) Whether the accident occurred due to the rash and negligent driving of the offending vehicle lorry bearing No.AP 21T 5166, which resulted in injuries to the petitioner?
- (2) Whether the Tribunal has awarded just and reasonable compensation or not?

Point No.1:

9. The finding of the Tribunal that the accident occurred due to rash

and negligent driving of the driver of the lorry bearing No.AP 21T 5166, which resulted in injuries to the petitioner became final, in view of non-filing of appeal or cross-objections by the respondents. The Tribunal arrived at such a conclusion basing on the oral and documentary evidence available on record. There are no grounds much less valid grounds to upset the said finding of the Tribunal on issue No.1. Accordingly, the point No.1 is answered.

Point No.2:

10. The oral and documentary evidence available on record clinchingly reveals that the petitioner was aged about 30 years by the time of the accident. The Tribunal has taken the multiplier as 16.5. As per the decision in **Sarla Verma v DTC**^[1], appropriate multiplier that would be applicable for the age group of 26 to 30 years is '17'. A perusal of the oral testimony of P.W.1 reveals that by the time of the accident, she was earning Rs.4,500/- per month. As rightly observed by the Tribunal, the petitioner has not produced documentary evidence to prove her income. In the absence of any documentary evidence, some guess work is inevitable to determine the income of the petitioner. It is needless to say that in the villages, womenfolk used to attend coolie works apart from attending domestic works. The services rendered by a housewife cannot be quantified in terms of money. A perusal of Ex.A4 reveals that the petitioner is one of members of co-operative milk society. Taking into consideration the facts and circumstances of the case, I am of the considered view that the petitioner may earn Rs.3,000/- per month even by attending coolie work besides attending household duties.

11. As per the recitals of Ex.A9 disability certificate, the petitioner incurred 55% disability. The oral testimony of P.W.1 coupled with Ex.A9 clearly reveals that the petitioner's left leg was amputated above the knee. The Tribunal has taken loss of earning capacity of the petitioner as 55%. The loss of future earnings comes to Rs.3,000 X 12

$X 17 \times 55/100 = \text{Rs.}3,36,600/-$. The Tribunal rightly granted an amount of Rs.3,000/- towards transport charges, Rs.15,000/- towards medicines and treatment, Rs.15,000/- towards pain and suffering; and Rs.25,000/- towards loss of future amenities. The total compensation for which the petitioner is entitled to is Rs.3,94,600/-. Thus, the petitioner is entitled to an enhanced compensation of (Rs.3,94,600 – Rs.1,67,000=) Rs.2,27,600/- with interest at 7.5% per annum from the date of petition till realization. The respondent Nos.1 and 2 are jointly and severally liable to pay the same. Accordingly, the point is answered.

12. In the result, the appeal is allowed in part, enhancing the compensation amount from Rs.1,67,000/- to Rs.3,94,600/-. The petitioner is entitled to interest at 7.5% per annum on the enhanced compensation of Rs.2,27,600/-. The respondent Nos.1 and 2 are jointly and severally liable to pay the same. There shall be no order as to costs in this appeal. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

T.SUNIL CHOWDARY, J

Date: 16.9.2015.

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^[1] (2009) 6 SCC 121