

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.3701 OF 2009

JUDGMENT:

1 This appeal is filed under Section 173 of M.V. Act, assailing the judgment and award dated 11.04.2008 passed in M.V.O.P.No.903 of 2006 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-XIV Additional Chief Judge, City Civil Court, Hyderabad.

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

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

4 On 26.12.2005 at about 10.00 a.m, the petitioner along with her family members was proceeding to the house in a tractor and trailer bearing No.AP 20 F 8293 and AP 36 T 0156. When they reached Gayathri sugar factory of Kamareddy, the driver of the RTC bus bearing No. AP 10 Z 2307 came in a rash and negligent manner and dashed the tractor and trailer. The accident occurred due to the rash and negligent driving of the driver of the bus against whom the Station House Officer, Kamareddy police station registered a case in Cr.No.135 of 2005 under sections 337 and 304-A IPC. Due to the accident the petitioner sustained fractures and injuries on various parts of the body. Immediately after the accident, the petitioner was shifted to Gandhi hospital, Hyderabad where she took treatment as inpatient for long time. The parents of the petitioner spent huge amount towards medicines and treatment. The respondent Nos.1 and 2 being the owners of the crime vehicle are liable to pay compensation of Rs.1.00 lakh to the petitioner.

5 The second respondent filed counter denying the material averments made in the petition inter *alia* contending that the accident occurred due to the rash and negligent driving of the driver of the tractor and trailer and that there was no negligence on the part of the driver of the bus. It is further contended that the amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant. Hence the petition may be dismissed.

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

- i. Whether the accident resulting in injuries to the petitioner occurred owing to the rash and negligent driving of driver of APSRTC Bus bearing No.AP 10 Z 2307?
- ii. Whether the petitioner is entitled for compensation and, if so, to what amount?
- 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.4 and Ex.X.1 were marked. On behalf of the respondents, no oral or documentary evidence was let in.

8 Having appreciated the material available on record, the Tribunal arrived at a conclusion that the accident occurred due to rash and negligent driving of the driver of the bus bearing No. AP 10 Z 2307, which resulted in injuries to the petitioner and allowed the petition in part by awarding compensation of Rs.26,000/-, directing the respondents to pay the same with interest at 7.5% p.a. from the date of filing of the petition till the date of deposit. Being not satisfied with the amount of compensation awarded by the Tribunal, the claimant preferred the present appeal.

9 Heard Sri A. Eshwar, the learned counsel for the petitioner and Sri N. Vasudeva Reddy, the learned counsel for the respondents.

10 The contention of the learned counsel for the petitioner is two fold viz., 1) The Tribunal has not considered the oral testimony of P.W.2 and the recitals of Ex.A.3 in right perspective, and 2) The amount of compensation awarded by the Tribunal under various heads is too meagre.

11 *Per contra*, the learned counsel for the respondents submitted that the Tribunal has awarded just and reasonable compensation and hence there are no grounds to interfere with the well considered judgment and award passed by the Tribunal.

12 Now the point that falls for determination in this appeal is:

“Whether the compensation awarded by the Tribunal is just and reasonable or not?”

Point:

13 The finding of the Tribunal that the accident occurred due to the rash and negligent driving of the driver of the bus bearing No. AP-10 Z 2307 became final in view of non filing of appeal by the respondent – Corporation.

14 As per the testimony of P.W.1, his daughter sustained fracture and took treatment in Gandhi hospital, Hyderabad. As per the testimony of P.W.2, the petitioner was admitted in Gandhi hospital, Hyderabad on 27.12.2005 with commuted fracture of inferior fubic rami right and left with fracture right iliac without vascular deficit. The oral testimony of P.W.2 coupled with Ex.A.3 and X.1 clearly reveals that the petitioner sustained fracture on vital parts. By the date of accident, the petitioner was aged about 4 years. Due to fracture, the petitioner may be in trauma for long time. Taking into consideration the nature of fracture sustained by the petitioner, I am inclined to award an amount of Rs.30,000/- towards pain and suffering instead of Rs.21,500/- as awarded by the Tribunal.

15 Though the petitioner has taken treatment in Gandhi hospital, the parents of the petitioner might have spent some amount for taking of X-Rays and other clinical examinations. Taking into consideration the nature of fracture sustained by the petitioner I am inclined to award an amount of Rs.3,000/- towards medicines. The Tribunal rightly awarded an amount of Rs.2,000/- towards extra nourishment. Admittedly, the petitioner belongs to Kamareddy. Immediately after the accident, the petitioner was shifted to Hyderabad. During the period of treatment, the family members of the petitioner might have visited Hyderabad to see her by spending some amount. Taking into consideration the facts and circumstances of the case, I am inclined to award an amount of Rs.2,000/- towards transportation charges instead of Rs.500/- as awarded by the Tribunal.

16 Thus, the amount of compensation awarded is as follows:

Pain and suffering: Rs.30,000/-

Medicines: Rs.3,000/-

Extra nourishment: Rs.2,000/-

Transportation charges: Rs.2,000/-

=====

TOTAL Rs. 37,000/-

=====

17 The amount of compensation awarded under the above heads is just and reasonable to meet the ends of justice.

18 In the result, the appeal is allowed in part by enhancing the amount of compensation for Rs.26,000/- as awarded by the Tribunal to Rs.37,000/- directing the respondents to pay the same with interest at 7.5% p.a from the date of filing of the petition till the date of deposit. No order as to costs. As a sequel, miscellaneous petitions pending in this appeal, if any, shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 22nd April, 2015.

Kvsn