

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

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M.A.C.M.A.No.668 of 2009

JUDGMENT:

This appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') by the appellant/petitioner challenging the judgment and award, dated 27.09.2008 passed in M.V.O.P.No.1663 of 2005 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Warangal (for short, 'the Tribunal').

2. For the sake of convenience, the parties are hereinafter referred to as they are arrayed in the O.P. before the Tribunal.

3. The facts leading to filing of the appeal, in brief, are as follows:

On 04.09.2004 in the afternoon, the petitioner boarded an auto bearing No.AP 24V 422 at Thirumalagiri to go to his native place. When the auto reached near Suryapet Petrol Bunk, the driver of the auto had driven the same in a rash and negligent manner at a high speed and hit the tractor coming from opposite direction. The Station House Officer, Thirumalagiri registered a case in Crime No.74 of 2004 under Sections 337 and 338 I.P.C. against the driver of the auto. Due to accident, the petitioner sustained injuries on various parts of the body and took treatment as in-patient for long time and spent huge amount towards medicines and treatment. By the time of accident, the petitioner was aged about 30 years and used to earn Rs.4,000/- per month as an agriculturist. Due to injuries, the petitioner incurred permanent disability and thereby lost his income. The auto, which belongs to respondent No.1, was insured with respondent Nos.2 and 3 – Insurance Company as on the date of accident. Therefore, respondent Nos.1 to 3 are jointly and severally liable to pay compensation to the petitioner. Hence, the petition is filed under

Section 166 (1) (a) of the Act read with Rule 455 of the A.P.Motor Vehicles Rules, 1989 claiming compensation of Rs.1,00,000/-.

4. Respondent Nos.1 and 2 have remained *ex-parte*. Respondent No.3 filed counter denying all the averments made in the petition *inter alia* contending that there was no rashness or negligence on the part of the driver of the auto to cause the accident. The driver of the auto was not having valid and effective driving licence as on the date of accident. Therefore, this respondent is not liable to pay compensation to the petitioner. The amount of compensation claimed by the petitioner under various heads is highly excessive and exorbitant. Hence, the petition may be dismissed.

5. Basing on the above pleadings, the Tribunal framed the following issues:-

1. Whether the accident took place on account of the rash and negligent driving of the Auto bearing No. AP 24 V 422 by its driver or due to the circumstances beyond its control?
2. Whether the petitioner is entitled to receive any compensation? If so, to what amount, and from whom?
3. To what relief?

6. During the course of trial, on behalf of the petitioner, PWs.1 and 2 were examined and Exs.P.1 to P.36 were marked and Ex.X.1 was marked. On behalf of respondent No.3, no oral evidence was adduced and Ex.R.1 – Policy was marked.

7. The Tribunal, on appraisal of material available on record, arrived at a conclusion that the accident was occurred due to the rash and negligent driving of the driver of the auto and allowed the petition in part by awarding compensation of Rs.28,000/-.

8. Feeling aggrieved by the judgment and award of the Tribunal, the petitioner/claimant preferred the present appeal.

9. Heard Sri G.Anandam, the learned counsel for the appellant/petitioner and Sri Naresh Byrapaneni, the learned Standing Counsel for respondent No.3.

10. The contention of the learned counsel for the appellant/petitioner is two fold: (1) The finding of the Tribunal that driver of the auto was not having valid and effective driving licence as on the date of accident is not sustainable either on facts or law and (2) The Tribunal has not awarded reasonable amount under the head 'pain and suffering'.

11. Per contra, Sri Naresh Byrapaneni, the learned Standing Counsel for respondent No.3, submitted that the finding of the Tribunal that the driver of the auto was not having valid and effective driving licence as on the date of accident is supported by the recitals of Ex.P.5 – driving licence. He further submitted that the Tribunal has awarded just and reasonable compensation to the petitioner.

12. Now the points that arise for consideration in this appeal are:

1. Whether the Tribunal has awarded just and reasonable compensation to the petitioner or not?
2. Whether respondent No.1 had violated terms and conditions of policy so as to absolve the liability of respondent No.3?

13. **Point No.1:**

Basing on the material available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the auto. Respondent No.3 did not choose to file an appeal challenging the finding recorded by the Tribunal on issue No.1. The finding recorded by the Tribunal on issue No.1 with regard to the manner of the accident became final. Having regard to the facts and circumstances of the case,

I am of the considered view that the accident occurred due to the rash and negligent driving of the driver of the auto which resulted injuries to the petitioner.

14. A perusal of the record reveals that the Tribunal awarded the compensation under the following heads:

01.	Loss of earnings	Rs. 6,000/-
02.	Medicines and extra nourishment	Rs. 8,500/-
03.	Transportation charges	Rs. 2,000/-
04.	Pain and suffering	Rs.11,500/-
	Total:	Rs.28,000/-

15. A perusal of the record reveals that the petitioner has not produced any evidence to prove his income. The Tribunal having no other alternative assessed the income of the petitioner as Rs.2,000/- per month and awarded an amount of Rs.6,000/- towards loss of earnings. The petitioner filed medical bills worth of Rs.3,239/-. The Tribunal awarded an amount of Rs.8,500/- towards medical expenses and extra nourishment. The amount of compensation awarded under the heads of 'loss of earnings', 'medicines and extra nourishment' and 'transportation charges' is just and reasonable. The Tribunal awarded the compensation on a presumption that the petitioner sustained one fracture and one grievous injury. A perusal of Ex.P.3 – discharge summary reveals that the petitioner sustained two fractures. The petitioner took treatment as in-patient from 04.09.2004 to 28.09.2004 in M.G.M. Hospital, Warangal. This itself indicates the nature of the fractures sustained by the petitioner. Having regard to the facts and circumstances of the case, I am inclined to award an amount of Rs.30,000/- towards pain and suffering .

Thus, the amount of compensation to which the petitioner is entitled under various heads is as follows:

01.	Loss of earnings	Rs. 6,000/-
02.	Medicines and extra nourishment	Rs. 8,500/-
03.	Transportation charges	Rs. 2,000/-
04.	Pain and suffering	Rs.30,000/-
	Total:	Rs.46,500/-

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

16. **Point No.2:**

Respondent No.3 – Insurance Company has taken a specific plea in the counter that the driver of the auto was not having valid and effective driving licence as on the date of accident. The petitioner produced Ex.P.5 – attested copy of driving licence to establish that the driver of the auto was having valid and effective driving licence as on the date of accident. The Tribunal arrived at a conclusion that the driver of the auto was not having valid and effective driving licence as on the date of accident, therefore, there is no statutory or contractual obligation on the part of respondent No.3 – Insurance Company to indemnify the liability of respondent No.1. The contention of the learned counsel for the appellant/petitioner is that the finding of the Tribunal is contrary to the recitals of Ex.P.5.

17. It is not out of place to extract the relevant portion in para 9 of the impugned judgment, which is as follows:

“We also have Ex.P5/driving licence of the driver of the said vehicle, which was valid from 18.12.2006 to 16.5.2015. One would not bring out that the driver of the Auto had valid driving licence on the date of accident i.e. 4.9.2004 and thus there has been a contravention of the term of the policy and as such, second and third respondents would not be liable to compensate the

petitioner.”

A perusal of the above paragraph gives an impression that the driver of the auto was not having driving licence on 04.09.2004. A perusal of the above paragraph also gives an impression that, as if, the driver of the auto had obtained driving licence as on 18.12.2006. A perusal of Ex.P.5 – driving licence clearly manifest that the driver of the auto had obtained driving licence for the first time on 17.05.1996. A perusal of the same further reveals that non-transport driving licence of the petitioner was valid upto 16.05.2016 whereas transport driving licence of the driver of the auto was valid upto 18.12.2006. A perusal of the same also reveals that the petitioner had obtained the transport driving licence with effect from 09.01.2004. As per the recitals of Ex.P.5, the driver of the auto was having valid and effective driving licence to drive the auto as on the date of accident i.e., 04.09.2004. If the Tribunal had evinced any interest to look into the recitals of Ex.P.5, the finding of the Tribunal would be otherwise.

18. Taking into consideration the recitals of Ex.P.5, I am of the considered view that the finding recorded by the Tribunal that the driver of the auto was not having valid and effective driving licence as on the date of accident is not sustainable on facts. Therefore, the finding of the Tribunal insofar as the driver of the auto was not having valid and effective driving licence as on the date of accident is hereby set aside.

19. Respondent No.1 being the owner of the auto is vicariously liable for the wrongful acts done by his driver during the course of employment. The auto was validly insured with respondent Nos.2 and 3 – Insurance Company as on the date of accident. Therefore, respondent Nos.2 and 3 have to indemnify the liability of respondent No.1. Therefore, respondent Nos.1 to 3 are jointly and severally liable to pay compensation to the petitioner with interest at the rate of 7.5%

per annum from the date of petition till the date of realisation.

20. In the result, the Appeal is allowed in part enhancing the quantum of compensation from Rs.28,000/- to Rs.46,500/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The respondent Nos.1 to 3 are jointly and severally directed to deposit the compensation within two (2) months from the date of receipt of a copy of this judgment. There shall be no order as to costs.

21. Consequently, Miscellaneous Petitions, if any, pending in this Appeal shall stand closed.

T.SUNIL CHOWDARY, J

18th February, 2015
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