

THE HON'BLE SMT JUSTICE ANIS

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M.A.C.M.A.NO.294 OF 2005

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JUDGMENT:

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1) This appeal is filed by the appellant/claimant under Section 173 of Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the order dated 07.12.2004 passed in M.V.O.P.No.458 of 2001 on the file of Motor Accidents Claims Tribunal-cum-I Additional District Judge, Kadapa, awarding compensation of Rs.2,75,000/-.

2) The appellant herein filed the above said O.P. under Section 166 of the Act, claiming compensation of Rs.3,25,000/- for the injuries sustained by him in a road accident that occurred on 23.12.2000.

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 23.12.2000 at 10.00 a.m., when the petitioner was attending the stone crushing work in a margin of the road, the crime lorry bearing No.ADD-5050 came from Porumamilla side with a high speed in a rash and negligent manner without blowing the horn, ran over the vehicle on the right leg of the petitioner, causing

fracture to the right leg and grievous injuries all over his body. The petitioner was shifted to Government Hospital, Cuddapah, for treatment. The police registered a case in Cr.No.31 of 2000 of Kalasapadu Police Station against the driver of the lorry. The petitioner is earning Rs.3,000/- per month as coolie and contributing the entire income to his family, consisting of his wife, children and old parents. He is the only bread-winner in his family. Because of the accident he is unable to attend the coolie work as usual. He spent Rs.40,000/- towards his treatment. Therefore, he prayed to grant compensation of Rs.3,00,000/-.

5) The first respondent filed counter calling upon the petitioner to prove the accident. The crime lorry bearing No.ADD-5050 is insured with respondent No.2. Hence, second respondent is liable to indemnify the first respondent.

6) The second respondent filed counter stating that the accident took place due to the negligence on the part of the petitioner himself, when he tried to cross the road without observing the vehicular traffic and got involved in the accident. Hence, it is not liable to pay the compensation. It is also stated that the petitioner has to prove that the driver of the crime lorry had valid driving licence and also to prove that he spent

amounts for medicines and extra nourishment, by producing the bills and that the amount claimed by the petitioner is excessive.

7) Basing on the above pleadings, the Tribunal framed three issues and to substantiate the claim, the petitioner got examined himself as PW-1 and got marked Exs.A-1 to A-8 on his behalf. On behalf of the respondent, no oral or documentary evidence was adduced.

8) The Tribunal having considered the oral and documentary evidence on record, held that the accident took place due to the rash and negligent driving of the crime lorry bearing No.ADD-5050 and made both the respondents jointly and severally liable to pay the compensation of Rs.50,000/- along with interest at the rate of 9% per annum. Being not satisfied with the compensation awarded by the Tribunal, the petitioner/claimant filed the present appeal.

9) Learned counsel appearing for the appellant argued that the Tribunal has not considered the income of the appellant properly and granted less compensation for the disability suffered by him and it is also argued that the compensation awarded at Rs.10,000/- towards medicines is very less and the Tribunal has also not granted compensation under several

heads and prayed this court to enhance the compensation.

10) The learned counsel appearing for the second respondent-Insurance Company argued that the Tribunal, basing on the evidence placed on record, awarded just and reasonable compensation. Therefore, finding of the Tribunal needs no interference and prayed this court to dismiss the appeal.

11) 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?

12) P O I N T S: A Perusal of the evidence on record shows that the accident took place due to the rash and negligent driving of the driver of the vehicle bearing No.ADD-5050 of the first respondent, in which the appellant sustained injuries. Therefore, the order of the Tribunal in this regard needs no interference.

13) Insofar as the enhancement of compensation is concerned, the Tribunal held that the appellant has not

produced any evidence to prove that his income is more than Rs.15,000/- per annum. The Tribunal after considering the oral evidence, fixed the income of the petitioner as Rs.15,000/- per annum and after applying the relevant multiplier '16' and taking into consideration the injuries sustained by him, took the percentage of disability at 15% and thereby awarded an amount of Rs.36,000/- ($15,000 \times 16 \times 15\%$) under the said head.

14) It is not in dispute that the Tribunal granted Rs.10,000/- towards medicines, Rs.4,000/- towards pain and suffering. The said amount granted by the Tribunal is very meager, as the appellant received grievous injuries and took treatment for the said injuries, i.e., fracture of tibia and fibula and middle third to right leg and also received two simple injuries. The Tribunal has not granted any compensation for the two simple injuries received by the appellant. Therefore, an amount of Rs.10,000/- is awarded for two simple injuries sustained by the petitioner.

15) Coming to the award of compensation for the medicines, the Tribunal only granted Rs.10,000/- on the ground that the petitioner has not produced any prescription of the Doctor. It is no doubt true that the petitioner took treatment in the Government Hospital, Cuddapah and in the accident, he

received grievous injuries. In view of the nature of injuries sustained by the appellant, he is entitled to Rs.20,000/- towards medicines and Rs.10,000/- towards pain and suffering, Rs.10,000/- for the simple injuries and Rs.5,000/- towards transportation charges in addition to Rs.36,000/- awarded by the Tribunal for the disability suffered by him. Thus in all, the appellant is entitled to Rs.81,000/- (Rs.20,000+Rs.10,000+Rs.10,000/-+Rs.5,000+Rs.36,000 = Rs.81,000/-) as compensation.

16) Accordingly, the compensation awarded by the Tribunal is enhanced from Rs.50,000/- to Rs.81,000/-. The enhanced amount of Rs.31,000/- shall carry interest at the rate of 7.5% per annum in view of different rates of interests granted by the Hon'ble Supreme Court in the decisions reported in **Sanobanu Nazirbhai Mirza and others V. Ahmedabad Municipal Transport Service**^[1] and **Rebeka Minz and others v. Divisional Manager, United India Insurance Company Limited and another**^[2].

17) In the result, the appeal is partly allowed. Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

ANIS, J

Dt.18.12.2015

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[\[1\]](#)) 2013 ACJ 2733

[\[2\]](#)) 2012 ACJ 2328