

HON'BLE SMT JUSTICE ANIS

M.A.C.M.A.No.1415 of 2005

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 22.06.2004 passed by the VI Additional District Judge-cum-Chairman, Motor Vehicle Accidents Claims Tribunal, Visakhapatnam, in M.O.P.No.1645 of 1999, awarding compensation of Rs.40,000/-.

2. The appellant herein is the petitioner in the above O.P. filed under Section 166 of the Act claiming compensation of Rs.2,00,000/- for the injuries sustained by him in a motor vehicle accident that occurred on 06.11.1997.

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 06.11.1997 at about 5.00 p.m., when the petitioner was returning to Narsipatnam on his scooter from Koduru after completion of his work of telling vastu, when he reached the main road near Srikanya theatre, Narsipatnam, a tractor bearing registration No. AP 5 T 1287 belonging to second respondent came in opposite direction in a rash and negligent manner and dashed the scooter, due to which the petitioner fell down on the road along with his scooter and sustained grievous head injury and lost consciousness, thereafter he was shifted to Government Hospital, Narsipatnam and later he was shifted to K.G.Hospital, Visakhapatnam. Police of Narsipatnam registered a case against the driver of the tractor-trailer. Petitioner stated that he was getting Rs.5,000/- per month as income and because of his head injury, he lost his memory and became permanently disabled and prior to the accident he was hale and healthy and was attending to the work of telling vastu. Due to the injury, he became permanently disabled

person. Therefore prayed the Court to grant compensation of Rs.2,00,000/- against respondent Nos.1 & 2.

5. Before the Tribunal, the respondent Nos.1 and 2 have not contested the matter.

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

The third respondent put the petitioner to prove the manner of accident, age and income of the petitioner and stated that the compensation claimed by the petitioner is high and excessive. The third respondent specifically stated that the petitioner already filed O.P.No.1115 of 1998 claiming compensation of Rs.25,000/- under no fault liability. Further it is specifically averred by the third respondent that there is involvement of both the vehicles, i.e., tractor trailer and the scooter of the petitioner. Further the insurance company of the scooter is also necessary party to the petition and finally prayed the Court to dismiss the petition.

7. Basing on the above pleadings, the Tribunal framed three issues and to substantiate the claim, the appellant/petitioner got examined PWs.1 to 4 and got marked Exs.A1 to A7 & Ex.C1 on his behalf. On behalf of the contesting respondent, RWs.1 & 2 got examined and Exs.B1 to B6 & Ex.X1 case sheet got marked.

8. Petitioner himself examined as P.W.1 and in his evidence he narrated that the accident has taken place due to the rash and negligent driving of the driver of the tractor-trailer bearing No. AP 5 T 1287 and filed Ex.A1 copy of first information report and Ex.A4 copy of charge sheet in C.C.No.8 of 1998. To support the evidence of P.W.1, P.W.2 was examined and he corroborated the evidence of P.W.1 in all aspects regarding the manner of accident. A perusal of evidence of P.Ws.1 and 2 clearly establish that the accident occurred due to the rash and negligent driving the driver of the tractor and trailer bearing No. AP 5 T 1287.

9. The Tribunal having considered the oral and documentary

evidence on record held that the accident occurred due to rash and negligent driving of the first respondent, who is working as a driver of the second respondent, and awarded an amount of Rs.40,000/- as compensation along with interest at 9% p.a., against respondent Nos.1 & 2, who are the driver and owner of the tractor bearing No.AP 5 T 1287 and dismissed the petition against the third respondent – insurance company. Being not satisfied with the award passed by the Tribunal, the petitioner preferred the present appeal for enhancement of compensation.

10. Learned counsel appearing for the appellant/ petitioner contended that in the accident the petitioner sustained head injury and he took treatment in Government Hospital, Narsipatnam initially and thereafter in K.G.Hospital, Visakhapatnam, where P.W.4 treated him and as per his evidence, the petitioner was treated in neuro surgery department of KG Hospital and P.W.4 clearly stated regarding the head injury sustained by the petitioner. The main grievance of the petitioner is that due to accident, he became disabled person and the Tribunal has not considered this aspect and awarded meager compensation. It is also argued by the learned counsel for the petitioner that the Tribunal ought to have fixed the liability against the second respondent in view of the judgment of the Hon'ble Supreme Court in ***NATIONAL INSURANCE COMPANY LIMITED v. SWARAN SINGH*** and finally prayed the Court to enhance the compensation.

11. On the other hand, learned counsel for the third respondent argued that the Tribunal after considering the evidence on record rightly granted just and reasonable compensation and the said finding of the Tribunal needs no interference. Further, the counsel also contended that the interest awarded by the Tribunal at 9% p.a. is high and prayed the Court to reduce the same.

12. 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?

13. **POINTS:** A perusal of the evidence on record shows that there is no dispute that the accident occurred due to the rash and negligent driving of the driver of the tractor bearing No.AP 5 T 1287 in which the petitioner sustained head injury. There is no dispute that after the accident, the petitioner initially admitted in Government Hospital, Narsipatnam and thereafter in KG Hospital, Visakhapatnam, the evidence of P.W.1 coupled with evidence of doctor (P.W.4) clearly shows that after the accident, the petitioner took treatment for his head injury in K.G.Hospital and P.W.4 is Neuro Surgeon. No doubt, the petitioner for the said head injury which he received on the left temporal partial intero cerebral haemotoma, got operated. For the said injury, the petitioner must have suffered pain and suffering and the Tribunal has not awarded any compensation for the same. Therefore, an amount of Rs.10,000/- is awarded towards pain and suffering. Coming to the disability is concerned, though P.W.4 is examined to speak about the treatment given by him to the injured-petitioner, but in his private capacity he issued Ex.A5 medical certificate. There is no dispute that a medical board is constituted in K.G.Hospital, Visakhapatnam, but the petitioner was not referred to medical board by P.W.4 and he independently issued Ex.A5 medical certificate. A perusal of evidence of P.W.4 shows that in Ex.A3 discharge certificate, it is mentioned that the speech of P.W.1 is normal and his condition was improved. In the absence of any disability certificate, the petitioner is not entitled for any compensation under the head of disability. Coming to the medical expenditure is concerned petitioner took treatment in Government Hospital and K.G.Hospital, which is completely free of cost. Further, the petitioner has not filed any medical bills to show that he purchased some medicines for the sake of treatment. In the absence of any medical

bills, the petitioner is not entitled for any compensation under the head of medical expenses.

14. The petitioner must have spent some amount towards extra nourishment and transportation charges. Therefore, an amount of Rs.5,000/- is awarded towards extra nourishment and transportation charges. In view of the decision reported in the case (first) cited supra, the second respondent is liable to pay compensation to the petitioner. Learned counsel for the insurance company argued that the rate of interest can be reduced from 9% to 7.5% per annum.

15. Therefore, in view of the above discussion, the appeal is partly allowed enhancing the compensation awarded by the Tribunal to the appellant/petitioner from Rs.40,000/- to Rs.55,000/- along with interest at 7.5% per annum on the enhanced amount from the date of appeal till the date of realisation. A perusal of the award passed by the Tribunal shows that the petitioner already filed O.P.No.1115 of 1998 claiming an amount of Rs.25,000/- under no fault liability. The Tribunal rightly observed that the petitioner is entitled to compensation subject to the deduction of compensation if any awarded under no fault liability and the said finding needs no interference. No order as to costs.

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

ANIS, J

Date: 30.10.2015

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