

HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A.No.40 OF 2013

JUDGMENT:

1 This appeal is filed challenging the judgment and award dated 03.10.2012 passed in O.P.No.147 of 2010 on the file of the Chairman, Motor Vehicle Accidents Claims Tribunal-cum-District Judge, Mahabubnagar, wherein and whereby an amount of Rs.4,37,000/- was awarded to the claimant as against the claim of Rs.15,00,000/-.

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

3 The facts leading to filing of the present petition are briefly as follows: On 15.4.2008 the petitioner was proceeding on his TVS Star motor cycle bearing No.AP 28AY 6514 from Tandur to Parigi in Ranga Reddy District. When he reached Sultanapur gate of Parigi, the driver of the auto bearing No.AP 22V 4165 came in opposite direction in a rash and negligent manner and dashed the petitioner's motor cycle. The Station House Officer, Parigi Police Station registered a case in Crime No.77 of 2008 under Section 338 IPC against the driver of the auto. Due to the accident, the petitioner fell down from the motor cycle and sustained grievous injuries on various parts of the body and took treatment as in-patient in Nizam's Institute of Medical Sciences (NIMS), Hyderabad for a long time. By the time of the accident, the petitioner was aged about 45 years and earning Rs.7,000/- per month by working as Lecturer in Global Junior College, Parigi. Due to the injuries, the petitioner lost his job and thereby lost his income. The auto bearing No.AP 22V 4165, which belongs to the first respondent, was insured with the second respondent under Policy Cover Note No.200701711581, with effect from 19.12.2007 to 18.12.2008. Therefore, the respondent Nos.1 and

2 are jointly and severally liable to pay compensation to the petitioner.

4 The first respondent filed counter denying all the averments made in the petition, *inter alia*, contending that the auto bearing No.AP 22V 4165 was insured with the second respondent at the time of the alleged accident; therefore, the second respondent alone is liable to pay compensation, if any, to the petitioner. The petition may be dismissed against this respondent.

5 The second respondent filed counter denying all the averments made in the petition, *inter alia*, contending that the accident occurred due to the rash and negligent driving of the motor cycle by the petitioner himself and there was no negligence on the part of the driver of the auto. It is the duty of the petitioner to prove that the auto bearing No.AP 22V 4165 was insured with the second respondent as on the date of the accident. The amount of compensation claimed by the petitioner, under various heads, is highly excessive and exorbitant. Hence, the petition may be dismissed against this respondent.

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

1. Whether the accident dated 15.4.2008 in which the petitioner K.Kishan Rao sustained injuries occurred due to the rash and negligent driving of the driver of auto bearing No.AP 22V 4165?
2. Whether the petitioner is entitled for compensation, if so to what amount and from which respondent?
3. To what relief?

7 During the course of the enquiry, on behalf of the petitioner, P.Ws.1 to 3 were examined and Exs.A1 to A12 were marked. No oral or documentary evidence was adduced on behalf of the respondents.

8 On appraising the oral, documentary evidence and other material 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 auto, which resulted in injuries to the petitioner and allowed the

petition in part by awarding compensation of Rs.4,37,000/-. Feeling aggrieved by the quantum of compensation award by the Tribunal, the claimant preferred the present appeal.

9 Learned counsel for the appellant-claimant submitted that the Tribunal has not properly appreciated the oral testimony of P.W.3 (Doctor) and Exs.A4 and A5 (Discharge card and Disability certificate respectively issued by NIMS). He further submitted that the finding of the Tribunal that Exs.A12 Postgraduate certificate is not genuine one is based on surmises and conjectures. He further submitted that the petitioner lost his job due to the injuries received in the accident and that aspect was not considered by the Tribunal in right perspective.

Per contra, learned counsel for the second respondent–Insurance Company submitted that the Tribunal has considered oral and documentary evidence in right perspective and awarded just and reasonable compensation to the petitioner. He further submitted that there are no grounds to interfere with the judgment and award passed by the Tribunal.

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

1. Whether the accident occurred due to the rash and negligent driving of the driver of the auto, which resulted in injuries to the petitioner?
2. Whether the Tribunal has awarded just and reasonable compensation or not?

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Point No.1:

11 As per the finding of the Tribunal, on issue No.1, the accident occurred due to the rash and negligent driving of the driver of the auto, which resulted in injuries to the petitioner. The said finding of the Tribunal became final in view of non-filing of appeal or cross-objections by the second respondent–Insurance Company. The Tribunal has assigned cogent and valid reasons while arriving at the conclusion that the accident occurred due to the rash and negligent driving of the driver of the auto. There are no grounds much less valid

grounds to interfere with the well considered finding of the Tribunal on issue No.1. Accordingly, point No.1 is answered.

Point No.2:

12 The predominant contention of the learned counsel for the petitioner is that the Tribunal has not considered the oral testimony of P.W.2 (Correspondent of Global Junior College) and the recitals of Exs.A8 (salary certificate) and A12 (Postgraduate certificate). As per the testimony of P.Ws.1 and 2, by the time of the accident, the petitioner was working as Lecturer in Global Junior College, Parigi and drawing a salary of Rs.7,000/- per month. The petitioner did not choose to call for the acquittance register or other relevant documents to substantiate that he had been working as Lecturer in Global Junior College. In para-11 of the judgment, the Tribunal made an observation that the petitioner pressed into service Ex.A8 (salary certificate) and Ex.A12 (Postgraduate certificate) in order to claim more compensation. I have carefully perused Ex.A12, which does not bear the seal of the University. It is not uncommon to produce this type of certificates in order to claim more compensation. If the Tribunal or court places reliance on this type of certificates, certainly it would lead to miscarriage of justice. While deciding the petitions filed under the Motor Vehicles Act, the Tribunal or court has to scrutinize the documents meticulously so as to arrive at just and reasonable conclusion.

13 The fact remains that the petitioner took treatment as inpatient in NIMS for a period of 20 days. A perusal of Ex.A4 (discharge card) clearly reveals that the petitioner sustained fracture to both bones of right fore arm and both bones of right leg. As seen from the testimony of P.W.3 (Doctor), the petitioner sustained: (1) Closed fracture to both bones of right fore arm; (2) Grade-III compound comminuted fracture to both bones of right leg; (3) Brachial plexus injury; and (4) Carpal instability. As per the testimony of P.W.3 and recitals of Ex.A5 (disability certificate), the petitioner sustained 80% disability to right upper limb and right tibia. The fact remains that the petitioner

sustained 80% disability to certain parts of the body. It is a settled principle of law that the percentage of functional disability cannot be equated with the loss of earning capacity in each and every case. The learned counsel for the petitioner submitted that due to fractures, the petitioner lost his job and thereby lost his income. As observed earlier, the petitioner has not filed appointment order, acquittance register or other documents to substantiate his stand. In the absence of legally admissible documents, it is not possible to arrive at a conclusion that by the time of the accident, the petitioner was working as a Lecturer in Global Junior College, Parigi. Even assuming, but not admitting, that the petitioner is a highly qualified person, certainly he can earn something even by conducting tuitions. The Tribunal has taken the income of the petitioner as Rs.3,000/- per month. It is a known fact that even a coolie may get not less than Rs.100/- per day in the villages. Taking into consideration, the facts and circumstances of the case, I am of the considered view that the petitioner may earn Rs.4,000/- per month. By the time of the accident, the petitioner was aged about 45 years. The Tribunal has taken the multiplier as '12'. As per the ratio laid down in ***Sarla Verma Vs. Delhi Transport Corporation***, the appropriate multiplier, for the age group of 41 to 45 years, is '14'. The Tribunal has rightly considered the loss of earning capacity of the petitioner as 70%. The loss of future earnings of the petitioner comes to $(Rs.4,000 \times 12 \times 14 \times 70/100 =)$ Rs.4,70,400/-. The Tribunal has awarded just and reasonable compensation under the other heads.

The compensation, under various heads, is as follows:

1. Loss of future earnings : 4,70,400
2. Damages to cloth, attendant charges
and transportation charges : 30,000
3. Medical expenditure and extra
nourishment : 55,000
4. Pain and suffering : 50,000

Rs.6,05,400

Thus the compensation as awarded above would meet the ends of justice. The respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioner. Accordingly, the point No.2 is answered.

14 In the result, the appeal is allowed in part, enhancing the compensation from Rs.4,37,000/- to Rs.6,05,400/-. The claimant is entitled to interest at 7.5% p.a. on the enhanced amount of compensation of Rs.1,68,400/- from the date of filing of the petition till the date of deposit. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 31st July, 2015.

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