

**THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY**

**M.A.C.M.A.No.255 OF 2013**

**JUDGMENT:**

This appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 (the Act), by the second respondent–Insurance Company, challenging the judgment and award dated 18.7.2011 passed in M.V.O.P.No.654 of 2009 on the file of the Chairman, Motor Vehicle Accident Claims Tribunal-cum-VI Additional District Judge (Fast Track Court), Guntur, wherein and whereby compensation amount of Rs.1,14,150/- was awarded as against the claim of Rs.2,50,000/-.

2. The parties to this appeal will hereinafter be referred to as they are arrayed before the Tribunal, to avoid confusion.

3. The facts leading to filing of the appeal are briefly as follows: On 01.8.2007, the petitioner was proceeding as pillion rider on Bajaj Scooter being driven by his brother-in-law in Pattabhipuram, Guntur. When they reached near the road divider at Kanchana Towers, the driver of Tata Indica Car bearing No.AP 32A 2222 had driven the same in a rash and negligent manner and dashed the Scooter from its behind. The accident occurred due to the rash and negligent driving of the driver of the car against whom the Station House Officer, Pattabhipuram Police Station registered a case in Crime No.231 of 2007 under Section 337 IPC. In the said accident, the petitioner sustained fracture to right leg and multiple injuries on various parts of the body. He took treatment as inpatient in Government General Hospital, Guntur and Adarsh Hospitals, Guntur and spent huge amount towards medicines and treatment. Due to the injuries sustained in the accident, the petitioner could not attend his work for a long time and thereby lost the income. The car, which belongs to the first respondent, was insured with the second respondent-company with effect from 14.12.2006 to 13.12.2007. Hence, the petition under Sections 140 and 163A of the Act claiming a compensation of

Rs.2,50,000/- from the respondent Nos.1 and 2 jointly and severally with interest and costs.

4. The first respondent remained *ex parte*. The second respondent filed written statement denying all the averments made in the petition, *inter alia*, contending that the accident occurred due to the rash and negligent driving of the rider of the scooter and there was no negligence on the part of the driver of the car. The petitioner is not entitled to claim compensation unless the driver of the car was having valid and effective driving licence as on the date of the accident. The amount of compensation claimed by the petitioner is highly excessive and exorbitant. Hence, the petition is liable to be dismissed with costs.

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

1. Whether the accident occurred due to rash and negligent driving of the driver of Tata Indica Car bearing No.AP 32A 2222 and that resulted in causing the injuries to the petitioner?
2. Whether the petitioner is entitled to compensation? If so, to what amount and against whom?
3. To what relief?

6. During the course of trial, on behalf of the petitioner, P.Ws.1 and 2 were examined and Exs.A1 to A7 and Exs.X1 to X9 were marked. On behalf of the respondents, no oral or documentary evidence was let in.

7. On appraising the oral and documentary evidence 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 car, which resulted in injuries to the petitioner, and allowed the petition in part by awarding a compensation of Rs.1,14,150/-as against the claim of Rs.2,50,000/-. Feeling aggrieved by the judgment and award of the Tribunal, the second respondent—Insurance Company preferred the present appeal.

8. The contention of the learned counsel for the second respondent is two fold:

1. the Tribunal has not considered the recitals of Ex.A1 (F.I.R.) in right perspective and thereby erroneously allowed the petition;
2. the quantum of compensation awarded by the Tribunal is on higher side; therefore, it requires to be lessen.

***Per contra***, learned counsel for the petitioner submitted that the petition is filed under Section 163A of the Act; therefore, there is no necessity for the petitioner to prove the rashness or negligence on the part of the driver of the crime vehicle. He further submitted that the quantum of compensation awarded by the Tribunal is just and reasonable; therefore, it requires no modification.

9. Basing on the rival contentions, the point that arises for determination in this appeal is:

1. Whether the accident occurred due to the rash and negligent driving of the driver of Tata Indica Car bearing No.AP 32A 2222?
2. Whether the Tribunal has awarded reasonable compensation or not?

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**Point No.1:**

10. The present petition is filed under Section 163A of the Act. In fact, the petitioner need not prove the rash and negligent driving on the part of the driver of the crime vehicle. However, the petitioner, who is the victim of the accident, has deposed as P.W.1, and adduced documentary evidence, to prove the negligence on the part of the driver of the crime vehicle. Therefore, it would be seen to what extent the petitioner succeeded in establishing the negligence on the part of the driver of the crime vehicle.

11. As per the testimony of P.W.1, as on the date of the accident himself and his brother-in-law were proceeding on Bajaj Scooter in

Pattabhipuram, Guntur. In the meanwhile, the driver of Tata Indica Car bearing No.AP 32A 2222 had driven the same in a rash and negligent manner and dashed the scooter from its behind. In the cross-examination, he denied the suggestion that he and his brother-in-law were proceeding on wrong side of the road, due to which the accident occurred. In the cross-examination of P.W.1, nothing is elicited to shake his testimony so far as the manner of the accident is concerned. Whatever deposed by P.W.1 is fully supported by the recitals of Ex.A1 First Information Report, Ex.X2 Attested copies of Section 161 Cr.P.C., statements, and Ex.X3 Attested copy of rough sketch of scene of offence. If really the accident occurred as pleaded by the second respondent, what prevented the driver of the car to lodge a complaint to the concerned Police. The second respondent did not choose to examine the driver of the car or any other eye witness to the accident to substantiate the stand taken by it. Mere taking up a plea in the written statement would not amount to proof of the same. The second respondent has not adduced rebuttal evidence. The Tribunal has considered all these aspects and arrived at the right conclusion that the accident occurred due to the rash and negligent driving of the driver of Tata Indica Car bearing No.AP 32A 2222 in which the petitioner sustained injuries. Accordingly, point No.1 is answered.

**Point No.2:**

12. To prove the nature of injuries sustained by the petitioner, he got examined P.W.2 Dr.V.V.Narayana Rao, who treated him in Adarsh Hospitals, Guntur. As per the testimony of P.W.2, the petitioner was admitted in Adarsh Hospitals, Guntur on 04.8.2007 with fracture to right tibia and under went interlocking nail on 07.8.2007. His testimony further reveals that the petitioner was discharged from the Hospital on 18.8.2007. Ex.A6 is the cash receipt for the treatment period and Ex.A5 is the receipt pertaining to nail. In the cross-examination of P.W.2, nothing is elicited to shake his testimony so far as the

admission of the petitioner in Adarsh Hospitals and undergoing treatment there from 04.8.2007 to 18.8.2007 are concerned. Basing on the injuries sustained by the petitioner, P.W.2 assessed that the petitioner incurred 10% partial permanent disability. The Tribunal, taking into consideration the material available on record, awarded an amount of Rs.57,600/- towards loss of future earnings of the petitioner.

13. Basing on Ex.A4 medical bills, Ex.A5 receipt and Ex.A6 cash bill, the Tribunal awarded an amount of Rs.24,500/- towards medicines and treatment. The Tribunal also awarded Rs.3,000/- to the petitioner towards loss of earnings during the period of treatment. It is common knowledge that the Doctors may advise the patients to take special diet for uniting of fractures. The Tribunal, taking into consideration the fracture injury sustained by the petitioner to right tibia, awarded Rs.25,000/- towards pain and suffering; Rs.2,000/- towards extra nourishment and Rs.2,000/- towards special damages. The Tribunal awarded the compensation under the following heads:

| Sl.<br>No. | Nature of relief                                   | Amount of<br>compensation (Rs.) |
|------------|----------------------------------------------------|---------------------------------|
| 1.         | Loss of future earnings                            | 57,600                          |
| 2.         | Pain and suffering                                 | 25,000                          |
| 3.         | Medicines and treatment                            | 24,550                          |
| 4.         | Extra nourishment                                  | 2,000                           |
| 5.         | Loss of earnings during the period of<br>treatment | 3,000                           |
| 6.         | Special damages                                    | 2,000                           |
| TOTAL      |                                                    | 1,14,150                        |

The total compensation awarded to the petitioner, as above, is just and reasonable. The respondent Nos.1 and 2 are jointly and severally liable to pay the compensation to the petitioner with proportionate costs and interest at 7.5% per annum from the date of petition till the date of realization. Viewed from any angle, I am unable to accede to the contention of the second respondent that the quantum of compensation awarded by the Tribunal is on higher side. Accordingly, the point No.2 is answered.

14. In the result, the appeal is dismissed. There shall be no order as

to costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

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**T.SUNIL CHOWDARY, J**

Date: 04.09.2015.

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