

THE HON'BLE SMT. JUSTICE ANIS

M.A.C.M.A. No. 3048 OF 2005

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JUDGMENT:

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 22.12.1998 passed by the Chairman, Motor Accident Claims Tribunal-cum-Additional District Judge, Medak at Sangareddy, in O.P.No.327 of 1994, awarding compensation of Rs.10,000/-.

2. The claimant filed the above O.P under Section 166 of the Act, claiming compensation of Rs.80,000/- on account of the injuries sustained by him in a motor vehicle accident.

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

4. The brief averments made in the petition are as follows:

On 04.04.1994, while the petitioner was returning to his residence from the market on his cycle on the left side of the road and when he reached near Laxminarsimha rice mill at about 7.00 p.m., one lorry bearing No.AET 9094 came in rash and negligent manner and hit the petitioner from backside, due to which he fell down and sustained multiple fracture injuries. Immediately, the petitioner was shifted to Gandhi hospital where he was admitted as inpatient. The petitioner was put to severe pain and suffering due to injuries and he was unable to move from bed to carry out his normal works and he became permanently disabled person. Further, the petitioner suffered mental shock and agony due to injuries.

The petitioner was working as Watchman in Laxminarasimha rice mill at Toopran and earning Rs.1500/- per month and was contributing the same towards the maintenance of his family. Due to the accident, he was not in a position to maintain his family.

Therefore, respondent No.1 being the owner of the lorry and respondent No.2 being the insurer of the said lorry, are liable to pay compensation to the petitioner.

5. The respondent No.1 remained *ex parte* before the Tribunal.

6. The brief averments made in the counter filed by the respondent No.2 before the Tribunal are as follows:

The respondent put the petitioner to prove the manner of accident, age and income of the petitioner. The respondent specifically denied the involvement of the lorry and the injuries received by the petitioner. Further, it is stated that the petitioner himself was responsible for the accident as he himself contributed for the accident by cycling on the road without observing the traffic rules. The respondent also denied that the vehicle involved in the accident was insured with it. It is further stated that the claim of the petitioner is high and excessive, and finally, prayed the Court to dismiss the petition.

7. Basing on the pleadings, the Tribunal framed six issues and to substantiate the claim, the petitioner himself was examined as PW1 and got marked Exs.A.1 to A.9. On behalf of the respondent No.2, no oral evidence was adduced, but got marked Ex.B.1 – copy of insurance policy by consent.

8. The Tribunal, after considering the oral and documentary evidence, held that the accident was occurred due to rash and

negligent driving of the driver of lorry bearing No.AET 9094 and awarded compensation of Rs.10,000/- along with interest at 12% per annum.

9. Not satisfied with the award passed by the Tribunal, the appellant/petitioner preferred the present appeal.

10. The learned counsel for the appellant/petitioner argued that as per Ex.A.3, the petitioner sustained three simple injuries and the Tribunal without considering the nature of the injuries, awarded only meagre compensation. It is further argued that the Tribunal has not awarded any compensation under the heads of medical expenses, pain and suffering, extra nourishment and transportation charges. It is further argued that the Tribunal also has not awarded any compensation for loss of earnings to the petitioner during the period of treatment and thereafter. Therefore, prayed the Court to enhance the compensation.

11. On the other hand, the learned counsel for the respondent No.2 argued that the Tribunal, after considering the evidence of PW1 and the documentary evidence, granted just and reasonable compensation and the said finding needs no interference. It is further argued that the petitioner received only simple injuries and the Tribunal rightly held that the petitioner is entitled only Rs.10,000/- as compensation, and finally prayed the Court to dismiss the appeal.

12. Having regard to the submissions made by both the learned counsel, the points that arise for consideration are:

1. Whether the appellant/petitioner is entitled for enhancement of compensation?
2. Whether the compensation awarded by the Tribunal is just and reasonable?

13. **Points:**

On the date of accident, while the petitioner was returning to his house on a bicycle, the driver of the lorry bearing No.AET 9094 drove the vehicle in a rash and negligent manner and dashed him, due to which he sustained injuries. Thus, the Tribunal rightly held that the accident occurred due to rash and negligent driving of the driver of lorry bearing No.AET 9094.

14. A perusal of the evidence of PW1 shows that he was working as a Watchman in Laxminarasimha rice mill and earning Rs.1500/- per month. To prove the evidence of PW1, Ex.A.3 injury certificate is filed. A perusal of injury certificate shows that the petitioner sustained three simple injuries and he took treatment in Gandhi hospital. According to PW1, due to the injuries, he was not able to work properly and he spent huge amount towards medical expenses. It is no doubt that in view of Ex.A.6, the petitioner spent an amount of Rs.5,000/- towards treatment. Therefore, the petitioner is entitled for the said amount.

15. It is no doubt, as per Ex.A.3, though the petitioner sustained three simple injuries, the Tribunal only awarded a consolidated amount of Rs.10,000/-. However, considering the evidence of PW1, the petitioner is entitled for Rs.15,000/- for the injuries received by him. A perusal of the evidence on record and the findings of the Tribunal, no compensation is awarded under the heads of pain and suffering, extra nourishment and future loss of income. Considering this aspect, the petitioner is entitled for Rs.5,000/- towards pain and suffering, Rs.2,000/- towards extra nourishment and Rs.3,000/- towards loss of income. Thus, the petitioner is entitled for Rs.30,000/- instead of Rs.10,000/- awarded by the Tribunal.

16. Therefore, in view of the above discussion, the compensation awarded by the Tribunal is enhanced from Rs.10,000/- to Rs.30,000/- and on the enhanced amount of Rs.20,000/-, an interest @ 7.5% per annum is awarded from the date of appeal till the date of realisation.

17. Accordingly, the appeal is partly allowed. No order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

(ANIS, J)

29.01.2016
Anr

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