

THE HON'BLE SMT. JUSTICE ANIS

M.A.C.M.A. No. 4446 OF 2008

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 05.02.2008 passed by the Chairman, Motor Accident Claims Tribunal-cum-III Additional District Judge (Fast Track Court), Nizamabad, in O.P.No.162 of 2005, awarding compensation of Rs.46,300/-.

2. The claimant filed the above O.P under Section 166 of the Act, claiming compensation of Rs.3,00,000/- 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 12.08.2004, while the petitioner along with others were travelling in a Tata Sumo bearing No.AP25U 1154 from Jukkal towards Nizamabad and at about 7.00 p.m. when the vehicle reached Jukkal cross road, its driver drove it in a rash and negligent manner and applied sudden brakes when cattle came in opposite direction, as such the vehicle turned turtle. As a result of which the petitioner and other inmates of the vehicle received multiple grievous injuries. Immediately, the

petitioner was shifted to Venkateswara Hospital, Nizamabad, where he underwent treatment by spending Rs.80,000/-.

According to the petitioner, he was doing fish business and earning Rs.10,000/- per month and due to the injuries he could not do any work and lost all his income. Therefore, prayed the Court to grant compensation of Rs.3 lakhs against the respondents.

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 denied that the petitioner spent Rs.80,000/- for the treatment and also denied that the petitioner was doing fish business and getting Rs.10,000/- per month. The respondent also denied that the vehicle was insured with the second respondent and that the policy was in force at the time of accident. The respondent finally stated that the compensation claimed by the petitioner is high and excessive, and prayed the Court to dismiss the petition.

7. Basing on the pleadings, the Tribunal framed three issues and to substantiate the claim, the petitioner himself examined as PW1 and also examined PW2 and got marked

Exs.A.1 to A.6. On behalf of respondent No.2, no oral evidence was adduced, but got marked Ex.B.1 – copy of policy by consent.

8. The Tribunal, after considering the oral and documentary evidence, held that the accident occurred due to rash and negligent driving of the driver of Tata Sumo bearing No.AP25U 1154 and awarded compensation of Rs.46,300/- along with interest at 7.5% 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 in the accident the petitioner sustained three grievous injuries and two simple injuries, but the Tribunal has not considered those injuries and awarded meagre compensation of Rs.5,000/- each for the grievous injuries and Rs.2,000/- each for the simple injuries. It is further argued that the Tribunal awarded only Rs.1500/- towards extra-nourishment. It is also argued that the petitioner is a poor person, doing fish business and for a period of two months he was unable to do any work. Therefore, prayed the Court to enhance the compensation.

11. On the other hand, the learned counsel for the respondent No.2 vehemently opposed for enhancement of compensation and argued that the compensation awarded by

the Tribunal is just and reasonable, and prayed the Court to dismiss the petition.

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:**

A perusal of the oral and documentary evidence, it is proved that the accident occurred due to rash and negligent driving of the driver of the offending Tata Sumo bearing No.AP25U 1154.

14. A perusal of the award passed by the Tribunal shows that the Tribunal awarded Rs.5,000/- each to three grievous injuries and Rs.2,000/- each to two simple injuries. The contention of the petitioner is that the injuries are grievous in nature and he suffered fracture of distal radius and ulna to right wrist, fracture of both bones of right leg and fracture of 2nd and 3rd ribs, but the compensation awarded is very meagre. There is no dispute that as per the evidence of the doctor, the petitioner suffered three grievous injuries and two simple injuries. Therefore, considering the evidence of PW2, the petitioner is entitled to Rs.15,000/- each to three grievous

injuries and Rs.2,500/- each to two simple injuries, which comes to Rs.15,000/- X 3 + Rs.2,500/- X 2 = Rs.50,000/-.

15. It is no doubt true that for the aforesaid grievous injuries, the petitioner must have been spent some amount towards extra-nourishment. Therefore, the compensation is enhanced from Rs.1500/- to Rs.2500/- for extra-nourishment.

16. The Tribunal also awarded Rs.4,800/- towards loss of income and Rs.4,000/- towards the amount spent on the treatment and medicines. Considering the amount awarded by the Tribunal under the said heads, I am of the view that the Tribunal rightly awarded the said amounts and they finding needs no interference of this Court.

17. Thus, the petitioner is entitled for Rs.45,000/- for the grievous injuries, Rs.5,000/- for the simple injuries, Rs.2500/- for extra-nourishment, Rs.4,800/- towards loss of income and Rs.4,000/- towards amount spent on treatment and medicines, which comes to Rs.61,300/-.

18. Therefore, in view of the above discussion, the compensation awarded by the Tribunal is enhanced from Rs.46,300/- to Rs.61,300/-. A perusal of Ex.B.1 shows that the policy was in force, and therefore, the respondents 1 and 2 are jointly and severally liable to pay compensation of Rs.61,300/-.

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

(ANIS, J)

21.10.2016
Anr



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