

THE HON'BLE SMT.JUSTICE ANI S

C.M.A Nos.4280 and 4337 of 2004

COMMON JUDGMENT:

Since both appeals arise out of the order passed by the Chairman, Motor Accidents Claims Tribunal-cum-V Additional District Judge, Guntur in M.V.O.P.No.400 of 2002 on 14-07-2004, they are heard together and disposed of by this common judgment.

2. C.M.A.4280 of 2004 is filed by the Appellant-National Insurance Company challenging the award passed by the Tribunal; whereas C.M.A.No.4337 of 2004 is filed by the appellant/petitioner for enhancement of compensation from Rs.70,000/- to Rs.1,00,000.

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

4. The claimant filed the aforesaid O.P under Section 140, 141 and 163-A of Motor Vehicles Act,1988 claiming compensation of Rs.1,00,000/- with interest as well as costs.

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

On 17-12-2001 at about 1.30 P.M when the Auto bearing No.27 U 3185, in which the petitioner was

traveling, reached near Allurivaripem, the driver of the Auto drove the vehicle in a rash and negligent manner at high speed without blowing horn and without following traffic rules dashed a Hero Honda Motor cycle bearing No.AP 7G 9617, as a result of which the petitioner sustained injuries. The driver of the Hero Honda Motor cycle died on the spot. Immediately, after the accident, the petitioner was taken to a private hospital i.e., Aravind Hospital, Narasaraopet. Subsequently, for better treatment, he was shifted to Government General Hospital, Guntur. According to the petitioner, the accident was occurred only due to the rash and negligent driving of the driver of the Auto. Basing on the report given by the petitioner, police registered the same as a case in Cr.No.235 of 2001 under Section 304-A of the Indian Penal Code, 1860 against the driver of the Auto. Further, according to the petitioner, due to the said accident he deprived of the physical and mental agony besides loss of earning capacity. At the time of accident, the petitioner was aged about 40 years and was earning Rs.120/- per day and for that accident he spent the amount of Rs.20,000/- towards the medical expenses. After the accident he was not in a position to do any work.

6. 1st respondent remained ex parte. The 2nd respondent/Insurance Company filed a counter.

7. The brief averments made in the counter filed by the 2nd respondent before the Tribunal are as follows:-

The respondent put the petitioner to prove the manner of accident, age and income of the petitioner as well as the injuries sustained by him in the accident and spending huge amount for his treatment. The respondent also stated that there is no negligence on the part of the driver of the Auto and that the accident occurred only due to rash and negligent driving of the Hero-Honda motor cyclist and that the Hero Honda motor cyclist is a necessary party to the proceedings and as such the claim petition is bad for non-joinder of necessary party.

8. Basing on the above pleadings, the Tribunal framed three issues and to substantiate the claim, the petitioner himself was examined as PW.1 and other person was also examined as PW.2 and got marked Exs.A-1 to A-6 and Ex.X-1. On behalf of the 2nd respondent, RW.1 was examined and got marked Ex.B-1.

9. The Tribunal, after considering the oral and documentary evidence, having held that the accident was caused due to rash and negligent driving of the driver of the Auto, in which the petitioner sustained injuries, awarded

compensation of Rs.70,000/- along with 9% interest from the date of petition till realization against respondents.

10. Aggrieved by the order of the Tribunal, the Insurance Company filed C.M.A.4280 of 2004, whereas the petitioner filed C.M.A.No.4337 of 2004 for enhancement of compensation granted by the Tribunal,.

11. The learned counsel for the appellant/claimant in C.M.A.No.4337 of 2004 argued that due to the accident the petitioner sustained grievous injuries, as such the Tribunal having rightly held that he suffered 40% disability, granted compensation of Rs.70,000/-.

12. On the other hand, the learned counsel for the appellant/ Insurance Company in CMA No.4280 of 2004 argued that the Auto driver contravened the conditions of licence, as such the petitioner is not entitled to claim any compensation from the Insurance Company and moreover the accident was occurred only due to the rash and negligent driving of the motor cyclist of Hero Honda but not the driver of Auto.

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

- a) Whether the petitioner is entitled for enhancement of compensation; and
- b) Whether the Insurance Company has made out any case to set aside the order passed by the Tribunal.

14.POINTS:-

A perusal of the record shows that there is no dispute that on 17-12-20001 when the Auto bearing No.27U 3185, in which the petitioner was traveling, reached near Allurivaripalem, the driver of the Auto drove the same in a rash and negligent manner and dashed against Hero Honda motor cycle bearing No.AP 7G 9617, as a result of which, the petitioner sustained injuries. Immediately after the accident, he was shifted to Aravind Hospital, Narasaraopet and later to Government General Hospital, Guntur for treatment. Subsequently, police registered a case against the driver of the Auto. To prove the claim, the petitioner himself was examined as PW.1 and also got examined one doctor as PW.2 and got marked Exs.A-1 to A-6 and Ex.X-1 case sheet. On behalf of the respondents, RW.1 was examined, but he has no personal knowledge about the

accident and only basing on record, he has given the evidence on behalf of Insurance Company. There is no dispute that the accident was occurred due to rash and negligent driving of the driver of Auto.

14. The Tribunal, after considering the evidence of the Doctor, assessed the disability at 40% and held that the petitioner is entitled for Rs.90,000/-, but, however, basing on the evidence the Tribunal awarded only Rs.70,000/- as compensation. The contention of the counsel for the petitioner is that the petitioner claimed only the meager amount of Rs.1,00,000/- as compensation and he is entitled for the same. Whereas the contention of the Learned Standing Counsel for the Insurance Company is that the compensation awarded by the Tribunal is just and reasonable and the petitioner is not entitled for enhancement of compensation. A perusal of the case sheet i.e., Ex.X-1 shows that the petitioner suffered serious injuries i.e., deformative of the right thigh with shortening on the right lower limb and resistance of movement of right region with short limb gait. The deformity of the left forearm with restriction of elbow joint and also restriction of supination and pronation of left forearm. Due to the said fracture, he suffered 40% disability. The petitioner took treatment in the private hospital as well as in the

Government General Hospital, Guntur for the above injuries and he ought to have spent huge amount towards medical expenses. Therefore, considering the nature of the injuries sustained by the petitioner, he is entitled for compensation of Rs.1,00,000/-. However, with regard to interest is concerned, in view of the different rate of interests granted by Hon'ble Supreme Court in the decisions reported in *Sanobanu Nazirbhai Mirza and others Vs. Ahmedabad Municipal Transport Services*⁽¹⁾ and *Rebeka Minz and others Vs. Divisional Manager, United India Insurance Company Ltd., and another*⁽²⁾ the rate of interest, awarded by the Tribunal is liable to be reduced from 9% to 7.5% on the entire compensation amount from the date of petition till the date of realisation.

15. Accordingly, C.M.A.No.4337 of 2004 is partly allowed while enhancing compensation of Rs.70,000/- to Rs.1,00,000/- with 7.5% interest per annum from the date of filing petition till date of realization.

16. C.M.A.No.4280 of 2004 is also partly allowed while reducing the rate of interest from 9% to 7.5%.

¹ 2013 ACJ 2733

² 2012 ACJ 2328

No order as to costs in both Appeals. Miscellaneous Petitions, if any, pending in these appeals shall stand closed.

ANIS,J

13-06-2017
TSNR

