

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.2813 OF 2006

JUDGMENT:

This appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 by the appellant/petitioner challenging the judgment and award, dated 12.09.2006 passed in M.V.O.P.No.372 of 2003 on the file of the Chairman, Motor Vehicles Accidents Claims Tribunal-cum-II Additional District Judge, Guntur (for short, 'the Tribunal').

2. For the sake of convenience, the parties will hereinafter be referred to as they were arrayed in the O.P. before the Tribunal.

3. The facts leading to filing of the present appeal are, briefly, as follows:

On 19.03.2003 the petitioner along with his wife was proceeding to Bapatla from Kankatapalem Village on a motorcycle bearing No.AP-7F-6847. When they reached Bapatla State Highway, the driver of the lorry bearing No.AP-13T-2148 had driven the same in a rash and negligent manner and dashed against the motorcycle. The accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.AP-13T-2148 against whom, the Station House Officer, Bapatla Police Station, registered a case in Crime No.30 of 2003 for the offence punishable under Section 338 I.P.C. Due to accident, the petitioner and his wife fell down from motorcycle and sustained fractures and injuries on various parts of the body. The petitioner took treatment as inpatient in Peoples Trauma and Emergency Hospital,

Guntur and spent an amount of Rs.1,50,000/- towards medicines. By the time of accident, the petitioner was aged about 48 years and used to earn an amount of Rs.25,000/- per month. Due to accident, the petitioner sustained permanent disability thereby, lost his future earnings. The petitioner did not attend the work during the treatment period. The lorry bearing No.AP-13T-2148, which belongs to the first respondent, was insured with the second respondent vide cover note No.228058 with effect from 16.04.2002 to 15.04.2003. The policy was in force as on the date of accident. Therefore, respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.5,00,000/- to the petitioner with interest.

4. The first 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 motorcycle by the petitioner and there was no negligence on the part of the driver of the lorry. The amount of compensation claimed by the petitioner under various heads is highly excessive and exorbitant. Hence, the petition may be dismissed.

5. The second respondent filed written statement denying all the averments made in the petition *inter alia* contending that there was no rashness or negligence on the part of the driver of the lorry bearing No.AP-13T-2148. The amount of compensation claimed by the petitioner under various heads is highly excessive and exorbitant as the petitioner sustained only simple injuries. This respondent is not liable to pay compensation unless the petitioner establishes that the driver of the lorry was having valid and

effective driving licence at the time of accident. Hence, the petition may be dismissed.

6. 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 lorry AP-13T-2148?
- (2) To what compensation the petitioner is entitled and from whom?
- (3) To what relief?

7. During the course of enquiry, on behalf of the petitioner, P.Ws.1 to 4 were examined and Exs.A.1 to A.4, and Exs.X.1 to X.4 were marked. No oral or documentary evidence was adduced on behalf of the respondents.

8. After having a thoughtful consideration to the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.AP-13T-2148, which resulted in injuries to the petitioner and allowed the petition in part by awarding compensation of Rs.1,56,309/- in favour of the petitioner with interest at the rate of 6% per annum from the date of petition till the date of realisation.

9. Dissatisfied with the judgment and award of the Tribunal, the appellant/claimant preferred the present appeal.

10. Learned counsel for the appellant-petitioner submitted that the Tribunal failed to consider that the petitioner lost four teeth. He further submitted that the Tribunal failed to consider that the petitioner incurred 10% disability. He also submitted that the

Tribunal has not considered the oral and documentary evidence in right perspective and awarded a meagre amount.

11. *Per contra*, learned counsel for the second respondent submitted that the Tribunal considered the oral and documentary evidence available on record and granted just and reasonable compensation to the petitioner. He further submitted that the petitioner did not produce the disability certificate; therefore, he is not entitled for compensation under the head of loss of future earnings. He also submitted that the Tribunal awarded just and reasonable compensation to the petitioner; therefore, it is not a fit case to interfere with the judgment and award passed by the Tribunal.

12. Now 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 lorry bearing No.AP-13T-2148, which resulted in injuries to the petitioner? and
2. Whether the Tribunal has awarded just and reasonable compensation?

POINT No.1:

13. Basing on the oral testimony of PW.1 and Ex.A.1 certified copy of F.I.R. and Ex.A.2 certified copy of charge sheet, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.AP-13T-2148, which resulted in injuries to the petitioner. The Tribunal has assigned reasons much less cogent and valid reasons to its findings; therefore, it is not a fit case to interfere with the

finding of the Tribunal. The finding recorded by the Tribunal on this aspect became final in view of non-filing of the appeal by respondent Nos.1 and 2. Hence, point No.1 is answered in favour of the petitioner.

POINT No.2:

14. As per the testimony of PW.1, due to accident, he sustained fracture to chin and right rib. His testimony further reveals that he sustained injuries on various parts of the body and took treatment in Peoples Trauma and Emergency Hospital, Guntur. PWs.2 and 3 are the Doctors working in Peoples Trauma and Emergency Hospital, Guntur. As per the testimony of PWs.2 and 3, the petitioner was admitted in the hospital on 19.03.2003 and discharged on 19.05.2003. As per the testimony of PW.2, the petitioner sustained seven injuries, out of which, injury Nos.1, 2 and 4 are grievous in nature. As per the testimony of PW.3, the petitioner underwent operation. As per the recitals of Ex.A.3 Wound Certificate, the petitioner sustained fracture to mandible and ribs. The petitioner also sustained four simple injuries. A perusal of Ex.X.1 Case Sheet reveals that the petitioner was admitted in Peoples Trauma and Emergency Hospital, Guntur, on 19.03.2003 and discharged on 19.05.2003. A perusal of the same reveals that the petitioner underwent operation on 19.03.2003 and 22.03.2003. Due to three fractures and four simple injuries, the petitioner might have suffered a lot. Taking into consideration the facts and circumstances of the case, the Tribunal awarded an amount of Rs.43,000/- towards pain and suffering, but by mistake it is mentioned as towards disability. The Tribunal also awarded an amount of Rs.10,000/- under this head, which is not

permissible under law. As per the testimony of PW.4, the petitioner spent an amount of Rs.1,03,309/- towards medicines. Ex.A.4 is the medical bills to the tune of Rs.1,08,387/-. The Tribunal rightly discarded one bill. As per the testimony of PW.4, the petitioner spent nearly an amount of Rs.1,00,000/- towards medicines and treatment. As per the testimony of PW.4, he issued Ex.A.4 bills. The Tribunal while considering the nature of injuries sustained by the petitioner as well as the duration of the treatment, granted an amount of Rs.1,03,309/- towards medicines. The Tribunal awarded just and reasonable compensation towards medicines. Admittedly, the petitioner took treatment as inpatient for a period of two months. Due to injuries, the petitioner might not have attended to his work at least for a period of three months. Except the self served testimony of PW.1, there is no other convincing evidence to prove that he used to earn an amount of Rs.25,000/- per month. Taking into consideration the facts and circumstances of the case, this Court is inclined to award an amount of Rs.10,000/- towards loss of earnings during the treatment period. It is a known fact that one has to take special diet for healing of the wounds. Taking into consideration the nature of the fractures sustained by the petitioner as well as duration of the treatment, this Court is inclined to award an amount of Rs.5,000/- towards extra nourishment. The family members of the petitioner might have stayed in the hospital to look after the welfare of the petitioner. Taking into consideration the distance between the native place of the petitioner and the place of treatment, this Court is inclined to award an amount of Rs.3,000/- towards transportation charges. As per the testimony of PWs.2

and 3, the petitioner might have incurred 10% to 12% disability. For one reason or other, PWs.2 and 3 did not choose to issue disability certificate. In the absence of disability certificate, it is not safe to place reliance on the testimony of PWs.2 and 3. The fact remains that the petitioner sustained three fractures on vital parts of the body and took treatment for two months. It is a known fact that a person, who sustained a fracture, may not enjoy his life like other persons. Taking into consideration the facts and circumstances of the case, this Court is inclined to award an amount of Rs.10,000/- towards loss of future amenities. The compensation awarded under various heads is as follows:

01.	Pain and suffering	Rs. 43,000/-
02.	Medical expenses	Rs.1,03,309/-
03.	Loss of earnings	Rs. 10,000/-
04.	Extra nourishment	Rs. 5,000/-
05.	Transportation charges	Rs. 3,000/-
06.	Loss of future amenities	Rs. 10,000/-
	Total:	Rs.1,74,309/-

15. The petitioner is entitled to interest at the rate of 6% per annum from the date of petition till the date of realisation on the enhanced amount of Rs.18,000/-. The first respondent, being the owner of the lorry bearing No.AP-13T-2148, is vicariously liable for the wrongful acts done by his driver during the course of employment. A perusal of the record reveals that the lorry bearing No.AP-13T-2148, which belongs to the first respondent, was insured with the second respondent under cover note No.228058

with effect from 16.04.2002 to 15.04.2003. This fact is not being denied by the second respondent. The first respondent has not violated the terms and conditions of the policy; therefore, the second respondent has to indemnify the liability of the first respondent.

16. In the result, the Appeal is allowed in part by enhancing the quantum of compensation from Rs.1,56,309/- to Rs.1,74,309/- with interest at 6% per annum on the enhanced amount from the date of petition till the date of realisation. Respondent Nos.1 and 2 are jointly and severally directed to deposit the enhanced amount of compensation within a period of two (2) months from the date of receipt of a copy of this order. There shall be no order as to costs in this appeal.

17. Consequently, Miscellaneous Petitions, if any, pending in this Appeal shall stand closed.



T.SUNIL CHOWDARY, J

Date: 04.04.2018
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