

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.1721 OF 2007

JUDGMENT:

This appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 by the appellant/petitioner challenging the judgment and award, dated 12.04.2005 passed in O.P.No.1099 of 2000 on the file of the Chairman, Motor Vehicles Accidents Claims Tribunal-cum-V Additional District Judge, (F.T.C.), Ranga Reddy District at L.B.Nagar (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 27.10.1999 at about 8:00 A.M., the petitioner was proceeding to Mal Village from B.N Reddy Nagar on a jeep bearing No.AP-22-8898. When the jeep reached Mangalpally Cross Roads, Dayanand Garden, the driver of the jeep bearing No.AP-22-8898 had driven the same in a rash and negligent manner and dashed against a DCM Van bearing No.AP-9U-5748. The accident occurred due to the rash and negligent driving of the driver of the jeep bearing No.AP-22-8898 against whom, the Station House Officer, Ibrahimpatnam Police Station, registered a criminal case. Due to accident, the petitioner sustained injuries on various parts of the body and took treatment as an inpatient in Kamineni Hospital for long time. By the time of accident, the petitioner was earning Rs.1500/- per month as a Government Teacher. The jeep

bearing No.AP-22-8898, which belongs to the first respondent, was insured with the second respondent vide policy No.178407 with effect from 23.01.1999 to 22.01.2000. Therefore respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.1,00,000/- to the petitioner with interest at the rate of 18% per annum from the date of petition till the date of realisation.

4. The first respondent has not filed counter. The second respondent filed counter denying all the averments made in the petition *inter alia* contending that the accident occurred due to the negligence of the driver of the DCM Van and there was no negligence on the part of the driver of the jeep bearing No.AP-22-8898. The amount of compensation claimed by the petitioner under various heads is highly excessive and exorbitant. Hence, the petition is liable to be dismissed.

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

- (1) Whether the accident that took place on 27-10-1999 at about 8.00 a.m., near Mangalpally Cross Roads, Dayanand Garden, Bongulur Gate, on account of the rash and negligent driving by the Jeep driver bearing No.AP-22-8898, dashed the DCM Van bearing No.AP-9U-5748?
- (2) Whether the petitioner is entitled for compensation and if so, to what amount and from whom/
- (3) To what relief?

6. During the course of enquiry, on behalf of the petitioner, P.Ws.1 and 2 were examined and Exs.A.1 to A.10 were marked. On behalf of the second respondent, RW.1 was examined and Ex.B.1 was marked.

7. Basing on 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 jeep bearing No.AP-22-8898, which resulted in injuries to the petitioner and allowed the petition in part by awarding compensation of Rs.72,000/- to the petitioner with interest at the rate of 9% per annum from the date of petition till the date of realisation.

8. Being not satisfied with the quantum of compensation awarded by the Tribunal, the claimant preferred the present appeal.

9. Learned counsel for the appellant-petitioner submitted that the Tribunal has not considered the disability incurred by the petitioner. He further submitted that the amount of compensation awarded under various heads is meagre; therefore, it is a fit case to allow the appeal.

10. *Per contra*, the learned counsel for the second respondent submitted that the Tribunal awarded just and reasonable compensation to the petitioner; therefore, the appeal is liable to be dismissed.

11. 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 jeep bearing No. No.AP-22-8898, which resulted in injuries to the petitioner? and

2. Whether the compensation awarded by the Tribunal is just and reasonable?

POINT No.1:

12. As per the finding of the Tribunal, the accident occurred due to the rash and negligent driving of the driver of the jeep bearing No.AP-22-8898, which resulted in injuries to the petitioner. The second respondent filed M.A.C.M.A.No.3742 of 2005 challenging the judgment and award passed in O.P.No.1099 of 2000 and the same was dismissed on 02.08.2012 without disturbing the finding of the Tribunal on this aspect. Hence, this point is answered in favour of the petitioner.

POINT No.2:

13. As per the testimony of PW.1, she sustained fractures and took treatment as an inpatient in Kamineni Hospital. As per Ex.A.3, the petitioner sustained fracture to pelvis and two injuries. As per Ex.A.5-discharge summary, the petitioner took treatment as an inpatient from 27.10.1999 to 01.11.1999. PW.2 is the doctor, who treated the petitioner. The Tribunal awarded an amount of Rs.15,000/- towards pain and suffering. Taking into consideration the nature of the injuries sustained by the petitioner, the amount of compensation awarded under this head is just and reasonable. Basing on Ex.A.8-medical bills and Ex.A.9-prescriptions, the Tribunal awarded an amount of Rs.5,200/- towards medicines and treatment, which is just and reasonable to meet the ends of justice. The Tribunal awarded an amount of Rs.1,500/- towards loss of earnings. Admittedly, the petitioner did not attend the school for a period of 54 days. By the time of accident, the

petitioner was on probation. The Tribunal having arrived at a conclusion that the petitioner did not attend the school for a period of two months ought to have granted Rs.3,000/- towards loss of earnings instead of Rs.1,500/-. Hence, this Court is inclined to award an amount of Rs.3,000/- towards loss of earnings. The Tribunal also awarded an amount of Rs.2,300/- towards extra nourishment and transportation charges, which is just and reasonable. The Tribunal also awarded an amount of Rs.48,000/- towards disability. Instead of loss of future amenities, the Tribunal awarded this amount under the head disability. Due to fracture, the petitioner may not enjoy his life like other persons. Therefore, this Court is of the considered view that granting of an amount of Rs.48,000/- to the petitioner towards disability is just and reasonable. The compensation awarded under various heads is as follows:

01.	Pain and suffering	Rs.15,000/-
02.	Medicines and treatment	Rs. 5,200/-
03.	Loss of earnings	Rs. 3,000/-
04.	Extra nourishment and transportation charges	Rs. 2,300/-
05.	Disability	Rs.48,000/-
	Total:	Rs.73,500 /-

14. The amount of compensation awarded under the above heads is just and reasonable to meet the ends of justice. The petitioner is also entitled for interest at the rate of 7.5% per annum on the enhanced amount of compensation from the date of petition till the date of realisation. The first respondent, being the owner of

the jeep bearing No.AP-22-8898, is vicariously liable for the wrongful acts done by his driver. The second respondent, being the insurer of the jeep bearing No.AP-22-8898, has to indemnify the liability of the first respondent. Therefore, respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioner.

15. In the result, the Appeal is allowed in part by enhancing the quantum of compensation from Rs.72,000/- to Rs.73,500/-. The second respondent is directed to pay the enhanced amount of compensation Rs.1,500/- to the petitioner with interest at the rate of 7.5% per annum from the date of petition till the date of realisation and recover the same from the first respondent in view of the judgment of this Court in O.P.No.1099 of 2000. There shall be no order as to costs in this appeal.

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

T.SUNIL CHOWDARY, J

Date: 13.04.2018
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