

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.1022 OF 2006

JUDGMENT:

This appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 by the Insurance Company/respondent No.2 challenging the judgment and award, dated 03.05.2005 passed in O.P.No.670 of 2000 on the file of the Chairman, Motor Accident Claims Tribunal (III Additional District Judge), (F.T.C.), Nizamabad (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 09.11.1999 at about 5:00 PM, the petitioner along with one Sailu was standing by the side of the road. In the meanwhile, the rider of the Scooter bearing No.AP-25-B-5373 had driven the same in a rash and negligent manner and dashed against the petitioner. The accident occurred due to the rash and negligent driving of the rider of Scooter bearing No.AP-25-B-5373 against whom, the Station House Officer, Traffic Police Station, Nizamabad, registered a case in Crime No.146 of 1999 for the offence punishable under Section 338 I.P.C. Due to accident, the petitioner sustained fractures and took treatment as an inpatient in Mythri Hospital and spent an amount of Rs.60,000/- towards medicines. Due to injuries, the petitioner could not attend his work for long time thereby, lost his income. The Scooter bearing No.AP-25-B-5373, which belongs to the first respondent, was

insured with the second respondent company with effect from 07.08.1999 to 06.08.2000. Therefore, respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.1,60,000/- to the petitioner with interest at the rate of 24% per annum from the date of petition till the date of realisation.

4. The first respondent remained *ex parte*. The second respondent filed written statement denying all the averments made in the petition *inter alia* contending that the first respondent has not reported the factum of accident to this respondent. The first respondent had violated the terms and conditions of policy; therefore, there is no obligation on the part of this respondent to indemnify the liability of the first respondent. 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 was due to rash and negligent driving of the scooter bearing No.AP-25-B-5373 by its driver (sic. rider)?
- (2) Whether the petitioner is entitled for compensation. If so to what amount and against which of the respondents?
- (3) To what relief?

6. During the course of enquiry, on behalf of the petitioner, P.Ws.1 to 3 were examined and Exs.A.1 to A.6 were marked. On behalf of the second respondent, no oral evidence was adduced 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 rider of the Scooter bearing No.AP-25-B-5373, which resulted in injuries to the petitioner and allowed the petition in part by awarding compensation of Rs.40,000/- to the petitioner with interest at the rate of 9% per annum from the date of petition till the date of realisation.

8. Feeling aggrieved by the judgment and award of the Tribunal, the second respondent-insurance company preferred the present appeal.

9. Learned counsel for the appellant-second respondent strenuously submitted that the Tribunal committed an error while placing reliance on the testimony of PWs.2 and 3. He further submitted that the Tribunal failed to consider that the petitioner sustained only simple injuries and awarded the compensation on assumptions and presumptions; therefore, it is a fit case to allow the appeal.

10. Learned counsel for the first respondent/petitioner submitted that the accident occurred due to the rash and negligent driving of the rider of the Scooter bearing No.AP-25-B-5373. He further submitted that the petitioner sustained two fractures and the same was supported by oral testimony of PWs.2 and 3 and Exs.A.3 and A.5. He also submitted that the Tribunal awarded just and reasonable compensation to the petitioner; therefore it is a fit case to dismiss the appeal.

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 rider of the Scooter bearing No.AP-25-B-5373, 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 seen from the testimony of PW.1, on the date of accident, himself and one Sailu were standing by the side of road in Nizamabad. In the meanwhile, the rider of the Scooter bearing No. No.AP-25-B-5373 had driven the same in a rash and negligent manner and dashed against the petitioner. PW.1 is the injured witness; therefore, his testimony cannot be discarded on flimsy grounds. In the cross-examination of PW.1, nothing was elicited to shake his testimony so far as the manner of accident is concerned. As per the recitals of Ex.A.1-certified copy of F.I.R. and Ex.A.2-certified copy of charge sheet, the accident occurred due to the rash and negligent driving of the rider of the Scooter bearing No.AP-25-B-5373. A part from PW.1, the rider of the scooter is the competent person to speak about the manner of the accident. For one reason or other, the first respondent did not choose to come into the witness box. The second respondent also did not take steps to examine the rider of the scooter or any other witness to negate the contention of the petitioner. The Tribunal basing on the testimony of PW.1 and Exs.A.1 and A.2 arrived at a conclusion that the accident occurred due to the rash and negligent driving of the rider of the Scooter bearing No.AP-25-B-5373. The Tribunal

has assigned reasons much less cogent and valid reasons to its findings. I am fully endorsing the findings recorded by the Tribunal. There are no grounds much less valid grounds to upset the finding recorded by the Tribunal.

POINT No.2:

13. As per the testimony of PW.1, due to accident, he sustained fracture to right hand, right shoulder and injuries to left eye. He took treatment as an inpatient in Mythri Hospital for a period of 15 days. As per Ex.A.3-certified copy of injury certificate, the petitioner sustained two fractures. Due to fractures, the petitioner might have suffered a lot. The Tribunal awarded an amount of Rs.10,000/- to each fracture and Rs.5,000/- towards pain and suffering. It is needless to say that a person, who sustains injuries or fractures, is entitled for compensation under the head of pain and suffering and not under the head of fractures. The Tribunal awarded an amount of Rs.25,000/- under the above two heads. Taking into consideration the facts and circumstances of the case, this Court is of the considered view that granting of an amount of Rs.25,000/- under the above two heads is just and reasonable. The petitioner also took treatment as an inpatient in a private hospital for a period of 15 days. Taking into consideration the nature of the fractures sustained by the petitioner, the Tribunal awarded an amount of Rs.5,000/- towards medicines, which is just and reasonable. The Tribunal also awarded an amount of Rs.3,000/- towards extra nourishment and Rs.2,000/- towards transportation charges. It is a known fact that a person, who sustained injuries or fractures, has to take special diet for healing of injuries or fractures. In the instant case, the petitioner

sustained two fractures; in such circumstances, granting of Rs.3,000/- towards extra nourishment is just and reasonable. During the treatment period, the family members of the petitioner might have visited the hospital. Therefore, granting of Rs.2,000/- under head transportation charges is just and reasonable. Due to injuries, the petitioner might not have attended to his work at least for a period of three months. Taking into consideration the nature of the avocation, the Tribunal awarded an amount of Rs.5,000/- towards loss of earnings, which is just and reasonable.

14. Viewed from any angle, I am unable to accede to the contention of the learned counsel for the appellant that the amount of compensation awarded under various heads is highly excessive and exorbitant. On the other hand, the Tribunal taking into consideration the oral and documentary evidence available on record, awarded a compensation of Rs.40,000/-, which is just and reasonable to meet the ends of justice. There are no grounds much less valid grounds to interfere with the findings recorded by the Tribunal. The appeal lacks merits and *bona fides*.

15. In the result, the Appeal is dismissed. 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: 12.04.2018

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