

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A. No.244 of 2006

ORDER:

This appeal is filed by the claimant under Section 173 of the Motor Vehicles Act (the Act), assailing the judgment and award dated 19.9.2005 passed in M.V.O.P. No.827 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-VI Additional District Judge (III Fast Track Court), Warangal at Mahabubabad.

2. The parties hereinafter will be referred as they were arrayed before the Tribunal, for the sake of convenience.

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

On 04.12.2000, the petitioner was proceeding to Gavicherla from Hanamkonda in the jeep bearing No.APR 547. When the jeep reached the outskirts of Nekkonda Village, the driver of lorry bearing No.ADM 7754 had driven the same in a rash and negligent manner and dashed against the jeep. The accident occurred due to rash and negligent driving of the lorry bearing No.ADM 7754 by its driver, against whom the Station House Officer, Mamnoor Police Station, registered a case in Crime No.99 of 2001 for the offences under Sections 304A, 337 and 338 of IPC. Due to the accident, the petitioner sustained injuries on various parts of the body and thereby he lost his income as kirana businessman. The lorry bearing No.ADM 7754, which belongs to first respondent, was insured with the second respondent with effect from 17.4.2001 to 16.4.2002; therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.1,00,000/- to the petitioner with interest.

4. During the pendency of the O.P., the first respondent died and his legal representatives were added as respondent Nos.3 to 5.

5. The respondent Nos.3 to 5 were remained *ex parte*. The second respondent filed counter denying all the averments made in the petition *inter alia* contending that the accident occurred due to the rash and negligent driving of the driver of the jeep and there was no negligence on the part of the driver of the lorry. The amount of compensation claimed by the petitioner is highly excessive and exorbitant. This respondent is not liable to pay any compensation to the petitioner unless the driver of the lorry was having valid and effective driving licence as on the date of the accident. Hence, the petition may be dismissed against the second respondent.

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

- (1) Whether the accident took place on account of the rash and negligent driving of the crime lorry bearing No.ADM 7754, driven by its driver?
- (2) Whether the petitioner is entitled to any compensation? If so, to what amount and from whom?
- (3) To what relief?

7. During the course of the enquiry, on behalf of the petitioner P.Ws.1 and 2 were examined and Exs.A1 to A27 and Ex.X1 were marked. On behalf of the respondents, no witness was examined and no document was marked.

8. On appraisal of the oral and documentary evidence available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent act of the driver of the lorry

bearing No.ADM 7754, which resulted in injuries to the petitioner, and allowed the petition in part by awarding compensation of Rs.5,000/- directing the respondent Nos.2 to 5 to pay the same jointly and severally with interest at 7.5% per annum from the date of petition till the date of realisation. Being not satisfied with the quantum of compensation awarded by the Tribunal, the petitioner preferred the appeal.

9. The learned counsel for the petitioner submitted that the Tribunal failed to consider the injuries sustained by the petitioner. He further submitted that the Tribunal, without taking into consideration the documentary evidence available on record, awarded meager amount to the petitioner. He further submitted that the findings recorded by the Tribunal are not sustainable either on facts or in law; therefore, it is a fit case to allow the appeal. ***Per contra***, the learned Standing Counsel for the second respondent strenuously submitted that the petitioner sustained two simple injuries. He further submitted that the petitioner sustained fracture in the previous accident for which he claimed compensation by filing petition under Section 166 of M.V. Act. He further submitted that the Tribunal awarded just and reasonable compensation; therefore, it is not a fit case to dismiss the appeal.

10. Now the point that arises for determination in this appeal are:

Whether the Tribunal has awarded just and reasonable compensation or not?

Point:

11. As per the finding of the Tribunal, the accident occurred due to the rash and negligent driving of the lorry bearing No.ADM 7754 by its driver. The finding recorded by the Tribunal became final in view of non-filing of the appeal, challenging the said finding, by the second respondent.

12. As per the recitals of Ex.A5 medical certificate, the petitioner sustained two simple injuries. A perusal of Ex.A5 reveals that the petitioner sustained fracture in the previous accident. The Tribunal made an observation that Ex.A7 disability certificate and other medical bills-Exs.A8 to A24 filed by the petitioner pertains to previous accident. The material available on record clinchingly establishes that the petitioner sustained two simple injuries. As per Ex.A4-discharge card, the petitioner has taken treatment as in-patient in M.G.M. Hospital, Warangal for a period of three days. The Tribunal, after considering the oral and documentary evidence available on record, awarded an amount of Rs.5,000/- (Rs.2,500/- each) for the two simple injuries.

13. As pointed out by the learned counsel for the petitioner, the Tribunal has not awarded any amount towards medicines and extra-nourishment. It is a known fact that a person, who has taken treatment in a Government Hospital, has to purchase medicines from outside the Hospital. Taking into consideration the facts and circumstances of the case, this Court is inclined to award an amount of Rs.1,000/- towards medicines and Rs.1,000/- towards extra nourishment. Thus, the petitioner is entitled to a total compensation of Rs.7,000/-.

14. Having regard to the facts and circumstances of the case, this Court is of the view that the petitioner is entitled to a total compensation of Rs.7,000/- in stead of Rs.5,000/- as awarded by the Tribunal. The petitioner is entitled to the interest at 7.5% per annum on the enhanced amount of Rs.2,000/- from the date of petition till the date of realisation. The respondent Nos.3 to 5 being the owners of the lorry bearing No.ADM 7754 have not violated the terms and conditions of the policy so as to absolve the liability of respondent No.2-insurance company. The second respondent has to indemnify the liability of the first respondent. Therefore, the respondent Nos.2 to 5 are jointly and severally liable to pay compensation to the petitioner.

15. In the result, the appeal is allowed in part enhancing the quantum of compensation from Rs.5,000/- to Rs.7,000/- (Rupees seven thousand only) with interest at 7.5% per annum from the date of petition till the date of realisation. The respondent Nos.2 to 5 shall deposit the same within a period of two months from the date of receipt of a copy of this judgment. There shall be no order as to costs in this appeal. Miscellaneous petitions if any pending in this appeal shall stand closed.

T.SUNIL CHOWDARY, J

April 09, 2018.
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