

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.1007 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 13.02.2006 passed in O.P.No.842 of 2001 on the file of the Chairman, III Motor Accidents Claims Tribunal, Warangal (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 10.12.2001 the petitioner was proceeding to Warangal Depot-I on his cycle. When he reached near Kancharakunta main road Sridevi Talkies, Hanamkonda, the driver of the auto bearing No.AP-36-T-9251 had driven the same in a rash and negligent manner and dashed against the cycle of the petitioner. The accident occurred due to the rash and negligent driving of the driver of the auto bearing No.AP-36-T-9251 against whom, the Station House Officer, Hanamkonda Police Station, registered a criminal case. Due to accident, the petitioner received injuries all over the body and took treatment in Jaya Hospitals, Hanamkonda, as an inpatient and spent an amount of Rs.80,000/-. Due to accident, the petitioner sustained fractures on various parts of the body. The first respondent is the owner of the auto bearing No. AP-36-T-9251, which was insured with the second respondent

company as on the date of accident. Therefore respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.3,70,000/- to the petitioner with interest.

4. The first respondent 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 negligence of the petitioner and there was no negligence on the part of the driver of the auto bearing No.AP-36-T-9251. The driver of the auto was not having valid and effective driving licence as on the date of accident; therefore, this respondent is not liable to pay compensation to the petitioner. 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 occurred on 10.12.2001, was due to rash and negligent driving of driver of the auto bearing No.AP 36 T 9251 resulting in injuries to the petitioner ?
- (2) Whether the petitioner is entitled to compensation as claimed? If not (sic. so) what amount and from which of the respondents?
- (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.7 were marked. On behalf of the second respondent, no oral or documentary evidence was adduced.

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 auto bearing No.AP-36-T-9251, which resulted in injuries to the petitioner and allowed the petition in part by awarding compensation of Rs.2,68,500/- to the petitioner with interest at the rate of 7.5% 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 medical bills filed by the petitioner and awarded meagre amount. He further submitted that the Tribunal granted an amount of Rs.10,000/- towards pain and suffering even though the petitioner sustained three fractures and one injury. He also submitted that as per the testimony of PW.2, the petitioner incurred disability and the same was not considered by the Tribunal; therefore, it is a fit case to allow the appeal.

10. *Per contra*, Sri N.J.Sunil Kumar, the learned counsel for the second respondent, submitted that even though the petitioner did not file Disability Certificate, the Tribunal has considered the evidence of PW.2 and granted just and reasonable compensation. He further submitted that the petitioner is a Government employee; therefore, he is not entitled for any amount under the head 'loss of earnings' as he has been continuing in service. He also submitted that there are no grounds much less valid grounds to allow 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 driver of the auto bearing No. AP-36-T-9251, 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 auto bearing No.AP-36-T-9251, which resulted in injuries to the petitioner. The finding recorded by the Tribunal on this aspect became final in view of non-filing of the appeal by the respondents. Having regard to the facts and circumstances of the case, I am of the considered view that the accident occurred due to the rash and negligent driving of the driver of the auto bearing No.AP-36-T-9251, which resulted in injuries to the petitioner. This point is answered in favour of the petitioner and against the respondents.

POINT No.2:

13. As per the testimony of PW.1, he sustained injuries on the head, fractures to mandible, femur right thigh and lost two teeth. As per the testimony of PW.2, the petitioner has taken treatment as an inpatient in Jaya Hospitals, Hanamkonda. The oral testimony of PW.2 coupled with Ex.A.2 reveals that the petitioner sustained two fractures, two simple injuries and lost two teeth. The petitioner filed Ex.A.6-medical bills and Ex.A.7-prescriptions to an amount of Rs.1,10,000/-. As per the testimony of PW.2, the

petitioner spent nearly an amount of Rs.1,10,000/- towards medicines. The Tribunal having come to a conclusion that the petitioner spent an amount of Rs.1,10,000/- towards medicines, ought to have granted an amount of Rs.1,10,000/- instead of Rs.1,00,000/-. Taking into consideration the facts and circumstances of the case, this Court is of the considered view that the petitioner is entitled for an amount of Rs.1,10,000/- towards medicines and treatment. The Tribunal also awarded an amount of Rs.48,500/- towards fractures and injuries and Rs.10,000/- towards pain and suffering. It is needless to say that the injured person is entitled to compensation under the head 'pain and suffering.' The Court has to take into consideration the nature of the fractures and injuries sustained by the petitioner as well as the duration of the treatment while granting compensation under the head 'pain and suffering'. The Tribunal committed an error while granting compensation under the head 'injuries as well as pain and suffering'. Taking into consideration the nature of the fractures and injuries sustained by the petitioner as well as duration of the treatment taken by him, this Court is confirming the amount of compensation awarded by the Tribunal i.e., Rs.58,500/- towards pain and suffering. Taking into consideration the nature of the injuries sustained by the petitioner, the Tribunal awarded an amount of Rs.10,000/- towards extra nourishment and transportation charges. It is a known fact that the family members of the R.T.C. employee are entitled for bus pass. The Tribunal, while taking into consideration all these aspects, awarded an amount of Rs.10,000/- towards extra nourishment and transportation charges, which is just and reasonable to meet

the ends of justice. Due to fractures, the petitioner might not have attended to his work at least for some period. The petitioner might have applied for medical leave or earned leave. The Tribunal taking into consideration all these aspects, awarded an amount of Rs.25,000/- towards loss of earnings, which is just and reasonable. The Tribunal awarded an amount of Rs.50,000/- towards loss of future amenities and Rs.25,000/- towards permanent disability. It is not in dispute that the disability certificate was not filed by the petitioner. As seen from the testimony of PW.2, the petitioner is unable to take food like other persons in view of loss of teeth and fracture to mandible. Taking into consideration the facts and circumstances of the case, I am of the considered view that an amount of Rs.75,000/- (50,000 + 25,000) under the head of loss of future amenities is just and reasonable.

The amount of compensation awarded under various heads is as follows:

01.	Medicines and treatment	Rs. 1,10,000/-
02.	Pain and suffering	Rs. 58,500/-
03.	Extra nourishment and transportation charges	Rs. 10,000/-
04.	Loss of earnings	Rs. 25,000/-
05.	Loss of future amenities	Rs. 75,000/-
	Total:	Rs.2,78,500/-

14. The amount of compensation awarded under the above heads is just and reasonable to meet the ends of justice. The auto

bearing No.AP-36-T-9251, which belongs to the first respondent, was insured with the second respondent. It is not the case of the second respondent that the auto bearing No.AP-36-T-9251, which belongs to the first respondent, was not insured with it. The second respondent, being the insurer of the auto bearing No.AP-36-T-9251, 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. The petitioner is also entitled for interest at the rate of 7.5% per annum from the date of petition till the date of realisation on the enhanced amount of compensation.

15. In the result, the Appeal is allowed in part by enhancing the quantum of compensation from Rs.2,68,500/- to Rs.2,78,500/- with 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. Respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioner. 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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