

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.1054 OF 2006

And

CROSS-OBJECTIONS (SR) No.325092 of 2006

COMMON 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 15.11.2005 passed in O.P.No.99 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Nizamabad (for short, 'the Tribunal').

The first respondent/petitioner filed cross-objections challenging the quantum of compensation awarded to him as meagre.

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 11.01.2000 the petitioner boarded the lorry bearing No.AP 25 T 4828 at Hyderabad to go to Nizamabad along with iron load. When the lorry reached Japthi Village, the driver of the lorry had driven the same in a rash and negligent manner and dashed against a road side tree. Due to accident, the petitioner sustained fracture to both legs. The petitioner also sustained injuries on the head and other parts of the body. Immediately after the accident, the petitioner was shifted to Gandhi Hospital, Secunderabad and thereafter to Owaisi Hospital, Hyderabad, for treatment. The

petitioner's right leg was amputated below knee. The petitioner underwent operation and spent an amount of Rs.7,00,000/- towards medicines and treatment. By the time of accident, the petitioner was aged about 30 years and used to earn an amount of Rs.10,000/- per month as vegetable and fruit vendor. Due to amputation of leg, the petitioner lost his future income. The Station House Officer, Shankarampet Police Station, registered a case in Crime No.5 of 2000 for the offence punishable under Section 338 I.P.C. against the driver of the lorry. The first respondent is the owner of the lorry bearing No.AP 25 T 4828, which was insured with the second respondent company with effect from 23.07.1999 to 22.07.2000. Therefore, respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.12,00,000/- to the petitioner with interest..

4. The first respondent filed counter denying all the averments made in the petition *inter alia* contending that at the time of accident, the petitioner was not travelling in the lorry bearing No.AP 25 T 4828 as owner of the goods, but he was engaged as a hamali. The lorry of this respondent was insured with the second respondent; therefore, the second respondent alone is liable to pay compensation to the petitioner.

5. The second respondent filed counter denying all the averments made in the petition *inter alia* contending that by the time of the accident, the petitioner was travelling in the lorry as an unauthorised passenger. 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 may be dismissed against this respondent.

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

- (1) Whether the accident was due to rash and negligent driving of the lorry bearing No.AP 25 T 4828 by its driver?
- (2) Whether the petitioner is entitled to compensation? If so, to what amount and from whom?
- (3) To what relief?

7. During the course of enquiry, on behalf of the petitioner, P.Ws.1 and 2 were examined and Exs.A.1 to A.92 were marked. On behalf of the second respondent, RW.1 was examined and Ex.B.1 was marked.

8. 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 lorry bearing No.AP 25 T 4828, which resulted in injuries to the petitioner and allowed the petition in part by granting compensation of Rs.8,15,000/- to the petitioner with interest at the rate of 9% per annum from the date of filing of the petition till the date of deposit.

9. Feeling aggrieved by the judgment and award of the Tribunal, the second respondent insurance company preferred the present appeal and the claimant filed the cross-objections.

10. Learned counsel for the appellant-second respondent submitted that the Tribunal has not properly considered Ex.A.92 Disability Certificate of the petitioner and awarded compensation on assumptions and presumptions. He further submitted that at the time of the accident, the petitioner was travelling in the lorry as an unauthorised passenger; therefore, the second respondent insurance company is not liable to pay compensation to the petitioner. He also submitted that the Tribunal has not considered the terms and conditions of Ex.B.1 policy and allowed the petition on assumptions and presumptions. He further submitted that the amount of compensation awarded by the Tribunal is on higher side; therefore, it is a fit case to allow the appeal.

11. Learned counsel for the first respondent/cross-objector submitted that the Tribunal has not awarded just and reasonable compensation to the petitioner. He further submitted that due to amputation of right leg of the petitioner, he has not been attending to any work thereby, lost his income; therefore, it is a fit case to enhance the compensation.

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 25 T 4828?
2. Whether the compensation awarded by the Tribunal is on higher side? and
3. Whether the first respondent had violated the terms and conditions of policy?

POINT No.1:

13. As seen from the testimony of PW.1, on the date of accident, he boarded the lorry bearing No.AP 25 T 4828 at Hyderabad to go to Nizamabad. His testimony further reveals that when the lorry reached Japthi Village, the driver of the lorry had driven the same in a rash and negligent manner and dashed against a road side tree. Ex.A.1 is the certified copy of F.I.R and Ex.A.2 is the certified copy of the charge sheet. PW.1 is the competent person to speak about the manner of accident. In the cross-examination of PW.1, nothing was elicited to shake his testimony so far as the manner of the accident is concerned. The oral testimony of PW.1 is supported by the recitals of Exs.A.1 and A.2. Apart from that, PW.1 the driver of the lorry bearing No.AP 25 T 4828 is the competent person to speak about the manner of the accident. For one reason or other, the respondents did not choose to examine the driver of the lorry bearing No.AP 25 T 4828 or any other eye witness to the accident. The testimony of PW.1 remains unchallenged so far as the manner of the accident is concerned. The Tribunal has considered the oral and documentary evidence available on record in right perspective and arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.AP 25 T 4828. I am fully agreeing with the finding recorded by the Tribunal. Hence, point No.1 is answered in favour of the petitioner and against the respondents.

POINT No.2:

14. As seen from the testimony of PW.1, he took treatment as inpatient in Gandhi Hospital, Secunderabad and Owaisi Hospital,

Hyderabad. A perusal of Ex.A.3 clearly reveals that the right leg of the petitioner was amputated. A perusal of Exs.A.4 to A.89 and A.91 clearly reveals that the petitioner took treatment as inpatient for long time and his right leg was amputated below the knee. The Tribunal awarded an amount of Rs.20,000/- towards pain and suffering. Due to amputation to right leg, the petitioner might have undergone mental agony. Viewed from any angle, I am unable to accede to the contention of the learned counsel for the appellant that awarding of an amount of Rs.20,000/- towards pain and suffering is on higher side. The Tribunal also granted an amount of Rs.2,000/- towards transport expenses. The family members of the petitioner might have visited the hospital in order to look after his welfare. Hence, awarding of an amount of Rs.2,000/- towards transport expenses is not on higher side. Taking into consideration Exs.A.4 to A.51 medical bills, Exs.A.52 to A.54 prescriptions, Exs.A.55 to 89 medical bills, the Tribunal granted an amount of Rs.58,063/- towards medicines and extra nourishment. The medical bills filed by the petitioner clearly reveals that the petitioner spent nearly an amount of Rs.58,000/- towards medicines. Awarding of an amount of Rs.58,063/- towards medicines and extra nourishment is just and reasonable in view of nature of the injuries sustained by the petitioner.

15. As per the testimony of PW.2, the petitioner incurred 80% disability. Ex.A.92 is the Disability Certificate. Due to amputation of right leg, the petitioner incurred 80% disability. It may not be possible for the petitioner to attend each and every work in view of amputation of the right leg. The Tribunal after considering the various aspects, arrived at a conclusion that loss of future

earnings of the petitioner is 80%. As per the testimony of PW.1, at the time of accident, he was earning an amount of Rs.10,000/- per month as fruit and vegetal vendor. Except the oral testimony of PW.1, there is no other convincing evidence to prove the income of the petitioner at Rs.10,000/- per month. The income of a vegetal and fruit vendor depends upon the locality where he has been carrying on the business. The petitioner is the resident of Bhainsa of Adilabad District. Taking into consideration all these aspects, the Tribunal arrived at a conclusion that the petitioner may earn Rs.4,500/- per month. 80% of the income comes to Rs.3,600/- ($4,500 \times 80/100$). By the time of accident, the petitioner was aged about 32 years. The Tribunal has taken the multiplier as '17'. As per **Sarla Verma and others v. Delhi Transport Corporation and another**¹, the appropriate multiplier for the age of 32 years is '16'. The Tribunal wrongly applied multiplier as '17' instead of '16'. The loss of future earnings of the petitioner comes to Rs.6,91,200/- ($3600 \times 12 \times 16$), whereas the Tribunal awarded an amount of Rs.7,34,400/-.

Thus, in all, the amount of compensation to which the petitioner is entitled to under various heads is as follows:

For loss of future earnings	Rs.6,91,200/-
For pain and suffering	Rs. 20,000/-
For medical and extra nourishment	Rs. 58,063/-
Transport expenses	Rs. 2,000/-
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Total:	Rs.7,71,263/-
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¹ (2009) 6 SCC 121

16. The compensation awarded under various heads is just and reasonable to meet the ends of justice.

POINT No.3:

17. At the time of accident, the petitioner was travelling as an unauthorised passenger in the lorry bearing No.AP 25 T 4828. The second respondent has taken a specific plea in the counter that the first respondent had violated the terms and conditions of policy; therefore, there is no contractual obligation on the part of it to indemnify the liability of the first respondent. As seen from the testimony of RW.1, the lorry bearing No.AP 25 T 4828 was insured with the second respondent company with effect from 23.07.1999 to 22.07.2000 under Ex.B.1 policy. The oral testimony of RW.1 coupled with Ex.B.1 reveals that the policy was in force as on the date of accident. As seen from the testimony of PW.1, on the date of accident, he was travelling in the crime vehicle along with iron load. One Sayyad Asad is the *de facto* complainant. As per the recitals of Ex.A.1 F.I.R. and Ex.A.2 charge sheet, at the time of accident, the petitioner was travelling in the lorry along with iron load. The oral testimony of PW.1 coupled with Exs.A.1 and A.2 clearly reveals that by the time of accident, the petitioner was travelling in the lorry along with the goods. The finding recorded by the Tribunal that at the time of accident, the petitioner was travelling in the lorry as owner of the goods is supported by evidence much less legally admissible evidence. There are no grounds much less valid grounds to interfere with the finding recorded by the Tribunal on this aspect. It is needless to say that the insurance company has to indemnify the liability of owner of the crime vehicle in case the owner of the goods sustains injuries

in the accident. The first respondent, being the owner of the vehicle, is vicariously liable for the wrongful acts done by his driver during the course of employment. The second respondent, being the insurer of the lorry bearing No.AP 25 T 4828, has to indemnify the liability of the first respondent, who has not violated the terms and conditions of the policy. So far as cross-objections are concerned, as observed above, the Tribunal has granted more compensation than the petitioner is eligible. Therefore, the cross-objections are liable to be dismissed.

18. In the result, the Appeal is allowed in part by reducing the quantum of compensation from Rs.8,15,000/- to Rs.7,71,263/- with interest at the rate of 9% per annum 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. The Cross-objections are dismissed. There shall be no order as to costs in this appeal.

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

T.SUNIL CHOWDARY, J

Date: 02.04.2018

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