

HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A. No.933 of 2006

JUDGMENT:

This appeal is filed by the Insurance Company under Section 173 of the Motor Vehicles Act challenging the judgment and award, dated 19.12.2005 passed in O.P. No.398 of 2002 on the file of the Motor Accidents Claims Tribunal (V Additional District Judge), Fast Track Court, West Godavari, Eluru..

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

3. The facts leading to filing of the present appeal, in brief, are as follows: On 04.02.2002 at about 9.00 P.M., the petitioner boarded lorry bearing No. AP 16X 4176 at Eluru along with mosquito mats to go to his native village. When the lorry reached near Gundugolanu village, the 1st respondent had driven the same in a rash and negligent manner and dashed against a stationed lorry. Due to the accident, the petitioner sustained multiple injuries on various parts of the body. The Station House Officer, Denduluru Police Station registered a case in Cr.No.11 of 2002 under Section 337 IPC against the 1st respondent. After completion of investigation, the Investigating Officer laid charge sheet against the 1st respondent on the file of the II Addl. Judl. Magistrate of I Class, Eluru. Immediately, after the accident, the petitioner was admitted in the Government Head Quarters Hospital, Eluru. The petitioner also took treatment in a private hospital. The petitioner spent Rs.50,000/- towards treatment. At the time of accident, the petitioner was aged about 20 years and used to earn Rs.3,600/- per month by attending cooly work. Due to the

accident, the petitioner's left leg was amputated thereby he lost his earning capacity. Hence, the petition claiming compensation of Rs.1,50,000/-. First respondent is the driver of the crime vehicle bearing No.AP 16X 4176, which belongs to the 2nd respondent was insured with the 3rd respondent's company. Hence, respondents 1 to 3 are jointly and severally liable to pay compensation.

4. Respondents 1 and 2 set *ex parte*. Respondent No.3 filed written statement denying the averments made in the petition *inter alia* contending that at the time of accident, the petitioner was travelling in the vehicle as an unauthorized passenger. The amount of compensation claimed by the petitioner on various heads is highly excessive. The petitioner sustained simple injuries. Hence, it is prayed to dismiss the petition.

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

- 1) Whether the accident was occurred due to rash and negligent driving of lorry bearing No.AP 16X 4176 driven by its driver (R1)?
- 2) Whether the petitioner is entitled to claim any compensation? If so, to what amount and against whom?
- 3) To what relief?

6. During the course of the enquiry, on behalf of the petitioner, P.Ws.1 and 2 were examined and Exs.A1 to A13 were marked. On behalf of the 3rd respondent, R.W.1 was examined and Ex.B1 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 rash and negligent driving of the driver of the crime vehicle, which resulted in injuries to the petitioner, and allowed the petition

in part with costs by awarding compensation of Rs.1,17,700/- with interest at 9% per annum from the date of petition till the date of deposit into Court, directing the respondents 1 to 3 to pay the compensation. Feeling aggrieved by the judgment and award passed by the Tribunal, the Insurance Company preferred the present appeal.

8. Learned counsel for the 3rd respondent-Insurance Company submitted that the finding of the Tribunal that the accident occurred due to rash and negligent driving of the driver of the lorry bearing No. AP 16X 4176 is not sustainable either on facts or on law. He further submitted that the Tribunal failed to appreciate that at the time of accident, the petitioner was travelling in the goods vehicle as an unauthorized passenger. He further submitted that the Tribunal has mis-construed the evidence of R.W.1 and granted compensation to the petitioner on assumptions and presumptions.

9. **Per contra**, learned counsel for the petitioner submitted that the oral testimony of P.W.1 coupled with Ex.A1-F.I.R. clearly establishes that the accident occurred due to rash and negligent driving of the driver of the lorry bearing No. AP 16 X 4176. He further submitted that the oral testimony of P.W.2 coupled with Ex.A3 clearly establishes that the petitioner incurred 60% disability. He further submitted that the compensation awarded by the Tribunal is just and reasonable, therefore, it is not a fit case to interfere with the order of the Tribunal.

10. Now the points that arise for consideration in this appeal are:

(i) Whether the accident occurred due to rash and negligent driving of the driver of the lorry bearing No. AP 16X 4176?

(ii) Whether the compensation awarded by the Tribunal is justifiable or not?

Point No.1:

11. As seen from the testimony of P.W.1, on the date of accident, he boarded the lorry bearing No.AP 16X 4176 at Eluru to go to his native place. When the crime vehicle reached near Gundugolanu village, the 1st respondent had driven the same in a rash and negligent manner, due to which, the accident occurred. In the cross-examination, nothing was elicited to shake the testimony of P.W.1. P.W.1 being an injured witness is competent to speak about the manner of accident. R.W.1 is not an eye witness to the accident, therefore, his testimony is no way helpful to the 3rd respondent. Apart from P.W.1, 1st respondent is the competent person to speak about the manner of accident. For the reasons best known to him, the 1st respondent did not choose to enter into the witness box. The 3rd respondent did not take any steps to examine the 1st respondent, who is the driver of the lorry. The oral testimony of P.W.1 coupled with Ex.A1 clearly establishes that the accident occurred due to rash and negligent driving of the driver of lorry bearing No. AP 16X 4176. The Tribunal has considered the material available on record in right perspective and arrived at a conclusion that the accident occurred due to rash and negligent driving of the lorry by the 1st respondent. I am fully agreeing with the findings recorded by the Tribunal. There are no grounds, much less, valid grounds to interfere with the findings of the Tribunal on this aspect.

Point No.2:

12. As seen from the testimony of P.W.1, due to accident, he took treatment as an inpatient in Government Head Quarters Hospital, Eluru, for 20 days. His testimony further reveals that his left leg was amputated below the knee joint. Ex.A2 is the wound certificate. Ex.A3 is the attested copy of disability certificate. The testimony of P.W.2 clearly reveals that the petitioner's left leg was amputated below the knee. As per the testimony of P.W.2, the petitioner sustained 60% disability. In the cross-examination of P.W.2, nothing was elicited to shake his testimony. The oral testimony of P.Ws. 1 and 2 coupled with Exs.A2 and A3 clearly reveals that the left leg of the petitioner was amputated below the knee joint. In such circumstances, incurring 60% disability is more reasonable. Due to amputation, the petitioner might have suffered a lot. The Tribunal taking into consideration the nature of injury sustained by the petitioner, granted an amount of Rs.44,000/- towards pain and suffering. Viewed from any angle, I am unable to accede to the contention of the learned counsel for the Insurance Company that the amount of compensation awarded under this head is on higher side.

13. Admittedly, the petitioner took treatment for a period of 20 days. The petitioner might not have attended to his regular work for a period of at least one month. The Tribunal awarded an amount of Rs.700/- towards extra nourishment. One has to take special diet for healing of the wound. The Tribunal also awarded an amount of Rs.3,000/- towards loss of earnings. Even by attending coolly work, the petitioner may earn Rs.3,000/- per month. Therefore, awarding an amount of Rs.3,000/- towards loss of earnings

is just and reasonable. Though the petitioner took treatment in the Government Hospital, he might have spent some amount towards medicines. A perusal of the record reveals that the petitioner also took treatment in a private Hospital. Taking into consideration the facts and circumstances of the case, the Tribunal awarded an amount of Rs.10,000/- towards medical expenses. By the time of the accident, the petitioner was aged about 20 years. Due to amputation of the left leg of the petitioner, below the knee, it may not be possible for the petitioner to attend cooly work. Undoubtedly, the petitioner lost his future earnings due to amputation of his left leg. Taking into consideration the nature of the disability suffered by the petitioner, the Tribunal awarded an amount of Rs.60,000/- towards permanent disability. Viewed from any angle, I am unable to accede to the contention of the learned counsel for the Insurance Company that granting of Rs.60,000/- is on higher side. Basing on the oral and documentary evidence available on record, the Tribunal awarded compensation under the following heads:

	Rs.
1. Pain and sufferance	44,000
2. Loss of earnings	3,000
3. Attendant and extra Nourishment charges	700
4. Medical Expenses	10,000
5. Permanent disability	60,000
Total	1,17,700/-

The amount of compensation awarded to the petitioner, under the above heads, is just and reasonable and there are no grounds to interfere with the quantum of compensation awarded by the Tribunal.

14. As seen from the testimony of R.W.1, by the time of the accident, the lorry bearing No. AP 16X 4176, which belongs to the 2nd respondent was insured with the 3rd respondent under Ex.B1-policy. Ex.B1-policy was in force as on the date of the accident. The 3rd respondent has taken specific plea that by the time of accident, the petitioner was travelling in the crime vehicle as an unauthorized passenger. As per the recitals of Ex.A1-F.I.R., by the time of accident, the petitioner was travelling in the crime vehicle along with mosquito mats. As per the testimony of P.W.1, by the time of accident, the petitioner was travelling in the crime vehicle along with mosquito mats. The material available on record clearly establishes that by the time of accident, the petitioner was travelling in the crime vehicle along with his goods. As seen from the testimony of R.W.1, Ex.B1-policy covers the risk of owner of the goods. The 2nd respondent being the owner of the vehicle is vicariously liable for the wrongful acts done by the 1st respondent. The 2nd respondent has not violated the terms and conditions of Ex.B1-policy. Therefore, the 3rd respondent has to indemnify the liability of 2nd respondent in view of Ex.B1-policy. Therefore, respondents 1 to 3 are jointly and severally liable to pay the compensation. There are no grounds, much less, valid grounds to interfere with the order of the Tribunal. The appeal lacks merits and *bona fides* and is liable to be dismissed.

15. Accordingly, the appeal is dismissed. No order as to costs. Miscellaneous petitions, pending in this appeal, if any, shall stand closed.

T.SUNIL CHOWDARY, J

DATED: 23-03-2018

Hsd