

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.999 of 2006

JUDGMENT:

This appeal is filed under Section 173 of Motor Vehicles Act by the petitioner challenging the judgment and award dated 23.12.2005 passed in M.V.O.P.No.147 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-VII Additional District Judge, Guntur.

2. For the sake of convenience, parties to this appeal will hereinafter be referred as they were arrayed before the Tribunal.

3. The facts leading to filing of the present appeal are, briefly, as follows: On 03.1.2001, the petitioner was proceeding to attend calls of nature on the left side of Guntur-Hanumanpalem road in Budampadu Village. At that time, the driver of lorry bearing No.AEK 8244 drove the same in a rash and negligent manner and dashed the petitioner from his back. The Station House Officer, Kollipara Police Station registered a case in Crime No.1 of 2001 under Section 337 of IPC against the driver of the lorry. Due to the accident, both legs of the petitioner were fractured. The petitioner took treatment as in-patient in Government General Hospital, Guntur and underwent operation to both legs. By the time of the accident, the petitioner was aged about 16 years and was studying 7th class. The parents of the petitioner spent huge amount towards medicines and treatment. Due to the fractures, the petitioner suffered a lot. Lorry bearing No.AEK 8244, which belongs to the first respondent, was insured with second respondent with effect from 10.4.2000 to 09.4.2001; therefore, the

respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.1,90,000/- to the petitioner with interest at 18% per annum from the date of petition till realisation.

4. The first respondent-owner of the lorry remained *ex parte*. The second respondent-insurer filed counter denying all the averments made in the petition *inter alia* contending that there was no rashness or negligence on the part of the driver of the lorry to cause the accident. The petitioner sustained simple injuries. The amount of compensation claimed by the petitioner on various heads is highly excessive and exorbitant. The lorry bearing No.AEK 8244 was not insured with this respondent; therefore, the petition is liable to be dismissed with costs so far as this respondent is concerned.

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

- 1) Whether the accident occurred due to rash and negligent driving of the driver of lorry bearing Regn. No.AEK-8244?
- 2) Whether the petitioner is entitled to compensation and if so, to what amount and from whom?
- 3) To what relief?

6. During the course of enquiry, on behalf of the petitioner, P.Ws.1 to 3 were examined and Exs.A1 to A38 and X.1 were marked. On behalf of the respondents, no oral or documentary evidence was adduced.

7. On appraising the oral and documentary evidence 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 which resulted in injuries to the petitioner, and allowed the petition in part by awarding compensation of Rs.70,000/-directing the respondent Nos.1 and 2 to pay the same jointly and severally with interest at 7.5% per annum from the date of the petition till the date of realisation. Being not satisfied with the quantum of compensation awarded by the Tribunal, the petitioner preferred the present appeal.

8. The learned counsel for the petitioner submitted that the Tribunal having come to a conclusion that the petitioner spent an amount of Rs.13,162/- towards medicines ought to have granted the same in stead of Rs.5,000/-. He further submitted that the Tribunal awarded meagre amount under the heads of loss of future amenities and loss of marriage prospects. He further submitted that the Tribunal committed error while deducing 1/3rd towards personal expenses of the petitioner, which is not applicable in case of injuries.

9. *Per contra*, the learned standing counsel for the insurance company submitted that the Tribunal rightly considered the material available on record and awarded just and reasonable compensation. She further submitted that there are no grounds much less valid grounds to interfere with the well considered judgment and award of the Tribunal.

10. Basing on the rival contentions, the points that fall for determination in this appeal are:

- 1) *Whether the accident occurred due to rash and negligent driving of the driver of lorry bearing No.AEK 8244?*

2) *Whether amount of compensation awarded by the Tribunal is just and reasonable or not?*

Point No.1:

11. As per the testimony of P.W.1-the injured, on the date of the accident, he was proceeding to attend the calls of nature. Meanwhile, the driver of the lorry had driven the same in a rash and negligent manner and dashed him. As per the testimony of P.W.2, the accident occurred due to the rash and negligent driving of the driver of the lorry. As per the recitals of Ex.A.1 and Ex.A.2, the accident occurred due to rash and negligent driving of the driver of lorry bearing No.AEK 8244. The oral testimony of P.Ws.1 and 2 is supported by Exs.A.1 and A2 certified copies of the First Information Report and charge sheet respectively. In the cross-examination of P.Ws.1 and 2, nothing was elicited to shake their testimony so far as the manner of the accident is concerned. Basing on the oral and documentary evidence available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of lorry bearing No.AEK 8244, which resulted in injuries to the petitioner. I am fully agreeing with the finding recorded by the Tribunal on this aspect. The finding recorded by the Tribunal became final, in view of non-filing of the appeal by respondent Nos.1 and 2. Accordingly, point No.1 is answered.

Point No.2:

12. As seen from the testimony of P.W.3-Doctor, the petitioner sustained compound fracture to left femur. The petitioner underwent operation on 23.1.2001 and 06.2.2001, and skin-grafting on 20.3.2001. The testimony of P.W.3 further reveals that

the petitioner was admitted in Orthopedic Ward of Government General Hospital, Guntur on 04.1.2001 and was discharged on 28.4.2001. A perusal of Ex.A.3 certified copy of the wound certificate reveals that the petitioner sustained two fractures. A perusal of Ex.A4-O.P.Chit reveals that the petitioner was admitted in Government General Hospital, Guntur on 04.1.2001 and was discharged on 26.4.2001. Due to the nature of injuries sustained by the petitioner and the long period of treatment, he might have suffered a lot. For one reason or the other, the Tribunal has not awarded any amount under the head, "pain and suffering". Taking into consideration the nature of fractures sustained by the petitioner as well as the duration of treatment undergone by him as in-patient in Government General Hospital, Guntur, this Court is inclined to award an amount of Rs.20,000/- towards pain and suffering.

13. It is a known fact that a person, who took treatment in a Government Hospital, has to spend some amount towards purchase of medicines from outside the Hospital. It is also a known fact that the parents or relatives have to attend the patients, who are taking treatment in a Government Hospital, for which they have to spend some amount towards travelling expenses. Admittedly, the petitioner took treatment for a period of three months in Government General Hospital, Guntur. The petitioner underwent operation for insertion of K-Nail to right femur on 23.1.2001. The parents of the petitioner might have purchased K-Nail from outside. As per Ex.A.5 Medical bills, the parents of the petitioner spent an amount of Rs.13,162/- towards medicines. Without considering all these aspects, the Tribunal

granted an amount of Rs.5,000/- towards medicines. Taking into consideration the facts and circumstances of the case, this Court is inclined to grant an amount of Rs.13,162/- towards medicines and treatment.

14. The Tribunal awarded an amount of Rs.5,000/- towards loss of marriage prospects and Rs.5,000/- towards loss of amenities. Admittedly the petitioner incurred 30% disability. At the time of the accident, the petitioner was aged about 16 years. Taking into consideration the age of the petitioner, this Court is inclined to award an amount of Rs.10,000/- towards loss of future amenities and Rs.10,000/- towards loss of marriage prospects.

15. At the time of the accident, the petitioner was studying 7th class. Admittedly, the petitioner was not an earning member at the relevant point of time. In case of non-earning member, the Tribunal has to take the notional income for calculating the loss of future earnings. The Tribunal, taking into consideration the facts and circumstances of the case, has taken Rs.15,000/- per annum towards notional income of the petitioner. I am fully agreeing with the amount arrived at by the Tribunal towards the notional income. As seen from the testimony of P.W.3, the petitioner incurred 30% functional disability. It is a known fact that functional disability cannot be equated with that of loss of earnings in each and every case. By the time of the accident, the petitioner was aged about 16 years; therefore, 30% functional disability incurred by the petitioner certainly affects his earning capacity in future. As per the decision in **Sarla Verma v DTC**¹, proper

¹ (2009) 6 SCC 121

multiplier applicable for the age of 16 years is '18' but the Tribunal applied the multiplier '16'. In case of death only, the Tribunal has to deduct 1/3rd of income towards personal expenditure of the deceased. In case of injuries, there is no necessity to deduct any percentage of income towards personal expenses of the injured. But in this case the Tribunal has deducted 1/3rd of the income towards personal expenses of the petitioner-injured, which is not permissible under law. By doing so, the Tribunal awarded an amount of Rs.45,000/- (Rs.10,000 X 30/100 X 15) towards loss of future earnings, which is not in accordance with law. The petitioner is entitled to Rs.81,000 (Rs.15,000 X 30/100 X 18) towards loss of future earnings. Thus, the petitioner is entitled to the compensation under the following heads:

Sl. No.	Head of compensation	Amount awarded (in Rs.)
1.	Pain and suffering	20,000
2.	Medical expenses	13,162
3.	Loss of marriage prospects	10,000
4.	Loss of future amenities	10,000
5.	Loss of future earnings	81,000
Grand total		1,34,162

15. Absolutely there is no material on record to establish that the first respondent-owner of the vehicle had violated the terms and condition of the policy. The policy was in force as on the date of the accident; therefore, the second respondent has to indemnify the liability of the first respondent. The petitioner is entitled to the compensation of Rs.1,34,162/- with interest at 7.5% per annum from the date of petition till realisation. Accordingly, the point is answered.

16. In the result, the appeal is allowed in part enhancing the compensation from Rs.70,000/- to Rs.1,34,162/-. The petitioner is entitled to interest at 7.5% per annum on the enhanced amount of Rs.64,162/- from the date of petition till the date of realisation. The respondent Nos.1 and 2 are hereby directed to jointly and severally deposit the same within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs in this appeal. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

April 02, 2018.
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T.SUNIL CHOWDARY, J.

