

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A. No.1553 of 2007

ORDER:

This appeal is filed by the claimant under Section 173 of the Motor Vehicles Act, assailing the judgment and award dated 23.5.2007 passed in M.V.O.P. No.26 of 2004 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-IV Additional District Judge, Kadapa.

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 12.10.2003, the petitioner along with her relatives were proceeding to their village Ganganapalli, after attending a marriage at Chennur, in a Mini lorry bearing No.AP 04U 5187. At about 4.45 p.m., when they reached near Gollapalli Harijanawada, the driver of lorry bearing No.TN 23C 3767 had driven the same in a rash and negligent manner and dashed against the Mini lorry, wherein the petitioner and others were travelling. The accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.TN 23C 3767 against whom Police registered a case in Crime No.86 of 2003. Due to the accident, the petitioner sustained a fracture and injuries on various parts of the body. She took treatment as inpatient in Government Hospital, Kadapa for a long time and spent huge amount towards medicines and treatment. In the accident, the petitioner sustained fracture to pelvic bone, which resulted in permanent disability and thereby she lost her income. At the time of the accident, the petitioner was

earning Rs.4,000/- per month as shepherd. The first respondent is the owner of lorry bearing No.TN 23C 3767, which was insured with the second respondent vide policy No.012100/31/02/03359 valid from 09.2.2003 to 08.2.2004. The third respondent is the owner of Mini lorry bearing No.AP 04U 5187, which was insured with the fourth respondent vide policy No.551005/31/03/6700360 valid upto 31.5.2004. The respondent Nos.1 to 4 are, therefore, jointly and severally liable to pay compensation of Rs.2,00,000/- to the petitioner with interest at 16% per annum from the date of petition till the date of realization and for costs.

4. The first respondent remained *ex parte*. The second respondent filed counter denying all the averments made in the petition *inter alia* contending that this respondent is not liable to pay compensation to the petitioner unless the driver of the lorry bearing No.TN 23C 3767 was having valid and effective driving licence as on the date of the accident. The first respondent had violated the terms and conditions of the policy; therefore, this respondent is not liable to pay compensation to the petitioner. The amount of compensation claimed by the petitioner on various heads is highly excessive and exorbitant. Hence, the petition is liable to be dismissed against this respondent.

5. The third respondent filed counter *inter alia* contending that even according to the petitioner, the accident occurred due to rash and negligent driving of the driver of the lorry bearing No.TN 23C 3767; therefore, this respondent is not liable to pay compensation to the petitioner. The amount of compensation claimed by the petitioner is highly excessive and exorbitant.

6. The fourth respondent filed counter denying the averments made in the petition *inter alia* contending that the third respondent violated the terms and conditions of the policy by entrusting Mini lorry bearing No.AP 04U 5187 to a person, who was not having valid and effective driving licence as on the date of the accident. The amount of compensation claimed by the petitioner under various heads is highly excessive and exorbitant. Hence, the petition is liable to be dismissed.

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

- (1) Whether the petitioner received injuries in a motor vehicle accident occurred on 12.10.2003 at 4.45 p.m., due to rash and negligent driving of lorry bearing No.TN 23C 3767 by its driver belonging to respondent No.1?
- (2) Whether the petitioner is entitled for compensation, if so, to what amount and from whom?
- (3) To what relief?

Additional issues:

- (1) Whether there is contributory negligence on the part of the driver of the lorry bearing No.AP 04U 5187 belongs to the 3rd respondent, insured with 4th respondent?
- (2) To what relief?

The Tribunal recasted the issues on 15.3.2007, which are as follows:

- (1) Whether the petitioner sustained injuries on 12.10.2003 at 4.45 p.m., at Gollapalli bridge in a motor accident due to rash and negligent driving of the driver of the lorry bearing No.TN 23C 3767 owned by R.1 and insured with R.2 or due to rash and negligent driving of the driver of the lorry bearing No.AP 04U 5187 owned by 3rd respondent, insured with 4th respondent?
- (2) Whether the petitioner is entitled for compensation, if so, to what amount and from whom?
- (3) To what relief?

8. During the course of the enquiry, on behalf of the petitioner P.Ws.1 and 2 were examined and Exs.A1 to A6 were marked. On behalf of 4th respondent, its Administrative Officer was examined as R.W.1 and Exs.B.1 to B.3 were marked.

9. 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.TN 23C 3767 and allowed the petition in part by awarding an amount of 27,000/- to the petitioner towards compensation with interest at 7.5% per annum from the date of the petition till the date of realization. The petition against respondent Nos.3 and 4 was dismissed without costs. Feeling aggrieved by the quantum of compensation, the petitioner preferred the appeal.

10. The learned counsel for the petitioner-appellant submitted that the Tribunal has not considered the oral testimony of P.W.2 and recitals of Ex.A4 disability certificate. The finding of the Tribunal that the petitioner did not incur disability is contrary to the recitals of Ex.A.4. He further submitted that the Tribunal has not awarded any amount under the Head, "*loss of earnings*". He further submitted that the Tribunal awarded meager amount of compensation without taking into consideration the oral and documentary evidence available on record. ***Per contra***, learned counsel for the second respondent submitted that the petitioner has not produced the disability certificate issued by the Medical Board and the same was considered by the Tribunal in right

perspective. He further submitted that the Tribunal awarded just and reasonable compensation; therefore, it is not a fit case to interfere with the well considered judgment and award of the Tribunal.

11. Now, the point that arises for consideration is:

Whether the Tribunal has not awarded just and reasonable compensation to the petitioner?

Point:

12. As per the finding of the Tribunal, the accident occurred due to rash and negligent driving of the driver of lorry bearing No.TN 23C 3767. The Tribunal arrived at such a conclusion basing on the oral testimony of P.W.1 coupled with Ex.A.1 certified copy of the First Information Report and Ex.A.3 certified copy of the charge sheet. The finding recorded by the Tribunal became final in view of non-filing of appeal by the respondents.

13. As per the testimony of P.W.1, she sustained fracture to pelvis and injuries on various parts of the body. Ex.A.2 is the certified copy of wound certificate, Ex.A4 is the disability certificate and Ex.A5 is the case sheet. The testimony of P.W.2-Dr.G.Venkata Subbaiah reveals that the petitioner was admitted in Government Hospital, Kadapa on 13.10.2003 with fracture to pelvis and discharged on 25.10.2003. The oral testimony of P.Ws.1 and 2 coupled with Ex.A2 reveals that the petitioner sustained fracture to both bones of pelvis. The petitioner took treatment as inpatient in Government Hospital, Kadapa for a period of thirteen days. The Tribunal awarded an amount of Rs.15,000/- towards pain and suffering. Taking into consideration the nature of fracture

sustained by the petitioner, this Court is of considered view that the petitioner is entitled to an amount of Rs.17,000/- towards pain and suffering, which is just and reasonable.

14. The Tribunal awarded an amount of Rs.10,000/- towards medicines and extra nourishment. As per the testimony of P.W.2 and Ex.A.6 expenditure list, the petitioner spent an amount of Rs.7,400/- towards medicines and treatment. Taking into consideration the facts and circumstances of the case, I am of the considered view that the Tribunal has justified in awarding Rs.10,000/- towards medical expenditure and extra nourishment.

15. The petitioner sustained fracture to both bones of pelvis. Admittedly, she took treatment as inpatient in Government Hospital, Kadapa for a period of thirteen days. Due to fracture, the petitioner might not have attended to regular work for about two months. The Tribunal awarded an amount of Rs.2,000/- towards loss of earnings. Taking into consideration the age of the petitioner and other attending circumstances, this Court is inclined to award an amount of Rs.5,000/- towards loss of earnings instead of Rs.2,000/-.

16. The testimony of P.W.2 reveals that the petitioner incurred 25% disability. Ex.A.4 is the disability certificate issued by P.W.2. Admittedly, the petitioner did not produce disability certificate issued by the Medical Board. P.W.2 did not assign reasons much less valid reasons for incurring 25% disability by the petitioner. It is the duty of the Doctor to explain reasons much less valid reasons with regard to disability incurred by an injured. The possibility of issuing this type of certificates in order to help the

claimants cannot be ruled out completely. There is no evidence on record much less legally admissible evidence, to prove that the petitioner incurred disability. The Tribunal considered all these aspects and discarded Ex.A4 disability certificate and the testimony of P.W.2 on that aspect. Absolutely there is no material on record to establish that the petitioner incurred permanent disability. In the absence of disability certificate issued by the Medical Board, the petitioner is not entitled to any compensation under the head, “*permanent disability*”.

17. Taking into consideration the facts and circumstances of the case, I am of the considered view that the petitioner is entitled to the compensation under the following heads:

Sl. No.	Head of compensation	Amount awarded (in Rs.)
1.	Pain and suffering	17,000
2.	Medical expenses	10,000
3.	Loss of earning	5,000
	Grand total	32,000

18. 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.32,000/- in stead of Rs.27,000/- as awarded by the Tribunal. The petitioner is entitled to the interest at 7.5% per annum on the enhanced amount of Rs.5,000/- from the date of petition till the date of realisation. The first respondent being the owner of lorry bearing No.TN 23C 3767 is vicariously liable for the wrongful acts done by the driver in course of employment. The oral testimony of R.W.1 coupled with Ex.B1 clearly reveals that insurance policy was in force as on the date of the accident. Except the oral testimony of R.W.1, there is no other convincing evidence to establish that the first respondent had violated the

terms and conditions of the policy; therefore, the second respondent has to indemnify the liability of the first respondent. The respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioner. Accordingly, the point is answered.

19. In the result, the appeal is allowed in part enhancing the quantum of compensation from Rs.27,000/- to Rs.32,000/- (Rupees thirty two thousand only) with interest at 7.5% per annum from the date of petition till the date of realisation. The respondent Nos.1 and 2 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.

April 09, 2018.
YS

T.SUNIL CHOWDARY, J

