

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A. No.2520 of 2006

ORDER:

This appeal is filed by the claimant under Section 173 of the Motor Vehicles Act, challenging the judgment and award dated 08.12.2005 passed in O.P. No.3037 of 2003 on the file of the Court of X Additional Chief Judge (Fast Track Court), City Civil Court, Hyderabad.

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 05.10.2003, the petitioner along with others boarded the auto bearing No.AP 1U 5627 at Sri Rampur to go to Godavarikhani. When the auto reached Indaram, the driver of the jeep bearing No.AP 15V 1168 had driven the same in a rash and negligent manner and dashed the auto from its opposite direction. The accident occurred due to rash and negligent driving of the driver of the jeep, against whom the Station House Officer, Jaipur Police Station registered a case in Crime No.143 of 2003. Due to the accident, the petitioner sustained injuries on various parts of the body and took treatment as inpatient in Medbone Hospital. She spent an amount of Rs.25,000/- towards medicines and treatment. At the time of the accident, the petitioner was aged about 30 years and used to earn Rs.3,000/- per month. Due to the accident, the petitioner could not attend her work, thereby she lost income. The first respondent is the owner of Jeep bearing No.AP 15V 1168, which was insured with the second respondent,

as on the date of the accident; therefore, respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.1,50,000/- 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 driver of the Jeep was not 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, there is no obligation on the part of this respondent to indemnify the liability of the first respondent. The petitioner sustained only simple injuries. The amount of compensation claimed by the petitioner under various heads is highly excessive and exorbitant.

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

- (1) Whether the accident resulting in injuries to the petitioner occurred due to the rash and negligent driving of the driver of the Jeep bearing No.AP 15V 1168?
- (2) Whether the petitioner is entitled for compensation, if so, to what amount and from 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 A7, Exs.X1 and X2 were marked. On behalf of the second respondent, Ex.B.1- Insurance policy was marked.

7. 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 the Jeep bearing No.AP 15V 1168, which resulted in injuries to the petitioner, and allowed the petition in part by awarding compensation of Rs.85,445/- directing the respondent Nos.1 and 2 to pay the same with interest at 6% per annum from the date of petition till the date of realisation. Being dissatisfied with the quantum of compensation awarded by the Tribunal, the petitioner preferred the appeal.

8. The learned counsel for the petitioner-appellant submitted that the Tribunal has not properly considered the monthly income of the petitioner. He further submitted that the Tribunal has not considered various documents filed by the petitioner and awarded meager amount; therefore, it is a fit case to allow the appeal.

9. The learned standing counsel for the second respondent submitted that the Tribunal awarded just and reasonable compensation; therefore, it is not a fit case to interfere with the judgment and award passed by the Tribunal.

10. Now the point that arises for determination in this appeal are:

Whether the Tribunal has not awarded just and reasonable compensation?

Point:

11. As per the finding recorded by the Tribunal, the accident occurred due to rash and negligent driving of the driver of the Jeep bearing No.AP 15V 1168, which resulted in injuries to the petitioner. The finding recorded by the Tribunal, on this aspect, became final, in view of non-filing of appeal by any of the

respondents. I am fully agreeing with the finding recorded by the Tribunal, on this aspect.

12. As seen from the testimony of P.W.1, due to the accident, she sustained two fractures and took treatment as inpatient. The oral testimony of P.W.2 coupled with Ex.A3-discharge card reveals that the petitioner sustained fracture to both legs. A perusal of Ex.X2 case sheet reveals that the petitioner took treatment as inpatient for a period of ten days from 05.10.2003 to 15.10.2003. Due to the fractures, the petitioner might have suffered a lot. The Tribunal awarded an amount of Rs.25,000/- (Rs.12,500/- each) towards fractures, and Rs.5,000/- towards pain and suffering. It is needless to say that in case of injuries, the claimant is entitled to the compensation under the head, "*pain and suffering*". For one reason or the other, the Tribunal awarded the compensation of Rs.30,000/- under two heads. Taking into consideration the facts and circumstances of the case, this Court is of considered view that awarding of an amount of Rs.30,000/- to the petitioner towards "*pain and suffering*" is just and reasonable.

13. The petitioner claims that she spent an amount of Rs.30,000/- towards medicines and treatment. Except the oral testimony of P.W.1, there is no other documentary evidence to prove that she spent an amount of Rs.30,000/-. As per Ex.A5 medical bills, the petitioner spent an amount of Rs.15,435/-. The petitioner also spent an amount of Rs.5,500/- under Ex.A4 bills. Taking into consideration Exs.A4 and A5 bills, the Tribunal awarded an amount of Rs.20,945/- towards medical expenses. As per the testimony of P.W.1, she took treatment in Kapal i.e.,

Ayurvedic Hospital. No document was filed to substantiate the same. However, the Tribunal awarded an amount of Rs.5,000/- towards Kepal treatment. This is the claimant's appeal; therefore, this Court is not inclined to interfere with the said amount. The Tribunal also awarded an amount of Rs.1,000/- towards extra nourishment and Rs.1,000/- towards transportation charges, which are just and reasonable.

14. The Tribunal awarded an amount of Rs.5,000/- towards loss of earnings. The petitioner sustained two fractures and took treatment as inpatient for ten days. The petitioner also took treatment as outpatient. Due to the fractures, the petitioner might not have attended to work at least for a period of four months as observed by the Tribunal. The Tribunal has taken monthly income of the petitioner as Rs.1,250/-. In the absence of documentary evidence, some guess work is inevitable to determine the income of the petitioner. It is a known fact that the womenfolk in the villages used to attend coolie work besides attending to domestic works. Taking into consideration the facts and circumstances of the case, this court is of considered view that fixing monthly income of the petitioner at Rs.3,000/- would meet the ends of justice. Hence, this Court is inclined to award Rs.12,000/- (3,000 X 4) to the petitioner towards loss of earnings instead of Rs.5,000/- as awarded by the Tribunal. The Tribunal, taking into consideration 10% disability incurred by the petitioner, awarded an amount of Rs.22,500/- towards loss of future earnings, which in my considered view is just and reasonable. 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	30,000
2.	Medical expenses	20,945
3.	Loss of future earnings	22,500
3.	Loss of earnings	12,000
4.	Towards Kepal Treatment	5,000
5.	Extra nourishment	1,000
6.	Transportation	1,000
	Grand total	92,445

16. 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.92,445/- in stead of Rs.85,445/- as awarded by the Tribunal. The petitioner is entitled to the interest at 6% per annum on the enhanced amount of Rs.7,000/- from the date of petitioner till the date of realisation. The first respondent being the owner of Jeep bearing No.AP 15V 1168 has not violated the terms and conditions of Ex.B.1 policy so as to absolve the liability of respondent No.2-insurance company. Therefore, second respondent has to indemnify the liability of the first respondent.

16. In the result, the appeal is allowed in part enhancing the quantum of compensation from Rs.85,445/- to Rs.92,445/- (Rupees ninety two thousand four hundred and forty five only) with interest at 6% per annum from the date of petition till the date of realisation. The respondents shall deposit the enhanced amount of Rs.7,000/- 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.

T.SUNIL CHOWDARY, J

April 10, 2018.

YS