

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A.No.2162 of 2006

JUDGMENT:

This appeal is filed by the appellant-claimant under Section 173 of Motor Vehicles Act challenging the judgment and award, dated 04.05.2006 passed in O.P.No.43 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge(Fast Track Court), Nizamabad.

2. The parties will be hereinafter referred to as they were arrayed before the trial Court to avoid confusion.

3. The facts leading to filing of the appeal, in brief, are as follows:

On 23.10.2002 the petitioner along with two others was proceeding to Chandrayanpally from Indalwai on TVS champ moped bearing No.AP 25 f 448. When the moped reached near Roopla Nayak Thanda, the driver of the RTC bus bearing No.AP 11 Z 1629 had driven the bus in a rash and negligent manner and dashed against the moped, due to which the accident occurred. Against the driver of the RTC bus, the Station House Officer, Dichpally police station registered a case in Cr.No.206/2002 under Section 337 IPC. Due to the accident, the petitioner sustained injuries on various parts of the body and took treatment in Government Hospital, Nizamabad. The parents of the petitioner spent an amount of Rs.50,000/- towards medicines and treatment. Respondents 1 and 2 being owners of the RTC bus bearing No.AP 11 Z 1629 are jointly and

severally liable to pay compensation of Rs.2,00,000/- with interest to the petitioner.

4. The respondents filed written statement denying all the averments made in the petition *inter alia* contending that the accident occurred due to the rash and negligent driving of the rider of the TVS moped and there was no negligence on the part of the driver of the RTC bus. The petitioner sustained simple injuries. The amount of compensation claimed by the petitioner under various heads is highly excessive and exorbitant. Hence, the petition may be dismissed.

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

1. Whether the accident has taken place due to rash and negligent driving of the vehicle bearing No.AP-11-Z-1629 by its driver?
2. Whether the petitioner is entitled for compensation? If so, to what just amount and from which of the respondents?
3. To what relief?

6. During the course of enquiry, on behalf of the petitioner, PWs.1 to 3 were examined and Exs.A.1 to A.3 were marked. On behalf of the respondents, R.W.1 was examined and no documents were 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 the rash and negligent driving of the driver of the bus bearing No.AP-11-Z-1629, which resulted injuries to the petitioner and allowed the

petition in part by awarding compensation of Rs.25,000/- in favour of the petitioner with interest at 7.5% per annum from the date of petition till the date of realisation.

8. Being not satisfied with the quantum of compensation awarded by the Tribunal, the petitioner-claimant preferred the present appeal.

9. Heard Sri K.Sarla Mahender Reddy, the learned counsel for the petitioner/appellant and Sri N.Vasudeva Reddy, learned standing counsel for the respondents' corporation.

10. Learned counsel for the petitioner/appellant submitted that the trial Court has not considered the testimony of P.W.2 and recitals of Ex.A3 wound certificate and granted meagre amount. He further submitted that the Tribunal ought to have granted some amount under the head of loss of earnings. He further submitted that the compensation awarded by the Tribunal under various heads is meagre, therefore, it is a fit case to allow the appeal.

11. Per contra, learned counsel for the respondent strenuously submitted that at the time of accident, the petitioner was aged about six years, therefore, he is not entitled to any amount under the head of 'loss of earnings'. He further submitted that the Tribunal ought not to have place reliance on the testimony of P.W.2 and Ex.A3. He further submitted that the Tribunal has awarded just and reasonable compensation, therefore, it is not a fit case to interfere.

12. Basing on the rival contentions, the point that arises for consideration in this appeal is:

Whether the Tribunal has not awarded just and reasonable compensation?

13. As per the finding of the Tribunal, the accident occurred due to the rash and negligent driving of the driver of the RTC bus bearing No.AP 11 Z 1629, which resulted injuries to the petitioner. The finding recorded by the Tribunal became final in view of non-filing of the appeal by the respondents 1 and 2. I am of the considered view that there are no grounds much less valid grounds to upset the findings of the Tribunal on this aspect. As per the testimony of P.W.1, due to the accident, he sustained fractures and injuries. As per the testimony of P.W.2, the petitioner sustained fracture to both bones of left leg, fracture of lower end of radius left. In the cross-examination of P.W.2, nothing was elicited to disbelieve his testimony. The oral testimony of P.Ws.1 and 2 coupled with Ex.A3 reveals that the petitioner sustained two fractures. By the time of accident, the petitioner was aged about six years. The Tribunal awarded an amount of Rs.20,000/-towards pain and suffering. Taking into consideration the age, duration of treatment and the nature of fractures sustained by the petitioner, this Court is inclined to award an amount of Rs.25,000/- towards pain and suffering. The Tribunal awarded an amount of Rs.5,000/- towards medicines even though the petitioner did not file single scrap of paper. Taking into consideration the age and nature of the

treatment taken by the petitioner, this Court is of the considered view that an amount of Rs.5,000/- awarded by the Tribunal towards medicines and treatment is just and reasonable. The petitioner took treatment as inpatient for two weeks. The parents of the petitioner might have spent some amount towards transportation. Hence, this Court is inclined to award an amount of Rs.1,000/- towards transportation charges. It is a known fact that in order to heal the wound, one has to spend some amount towards special diet. Taking into consideration the nature of injuries sustained by the petitioner, I am inclined to award an amount of Rs.3,000/- towards extra nourishment.

The compensation awarded under various heads is as follows:

1. Towards pain and suffering	Rs.25,000/-
2. Towards medicines and treatment	Rs. 5,000/-
3. Towards transportation charges	Rs. 1,000/-
4. Towards extra nourishment	Rs. 3,000/-

Total Rs.	34,000/-

The petitioner is also entitled for interest at 7.5% per annum from the date of petition till the date of realisation on the enhanced amount. Respondents No.1 and 2 are jointly and severally liable to pay compensation to the petitioner.

14. In the result, the appeal is allowed in part enhancing the compensation amount from Rs.20,000/- to Rs.34,000/- with interest at 7.5% per annum from the date of suit till the date of realisation. Respondents 1 and 2 are jointly and severally liable to pay the compensation with interest on the enhanced amount of compensation also. There shall be no order as to costs.

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

T.SUNIL CHOWDARY, J

11th April 2018
Rns

