

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.967 OF 2006

JUDGMENT:

This appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 by the appellant/petitioner challenging the judgment and award, dated 07.03.2006 passed in M.V.O.P.No.43 of 2002 on the file of the Motor Accidents Claims Tribunal-cum-I Additional District Judge at Chittoor (for short, 'the Tribunal').

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

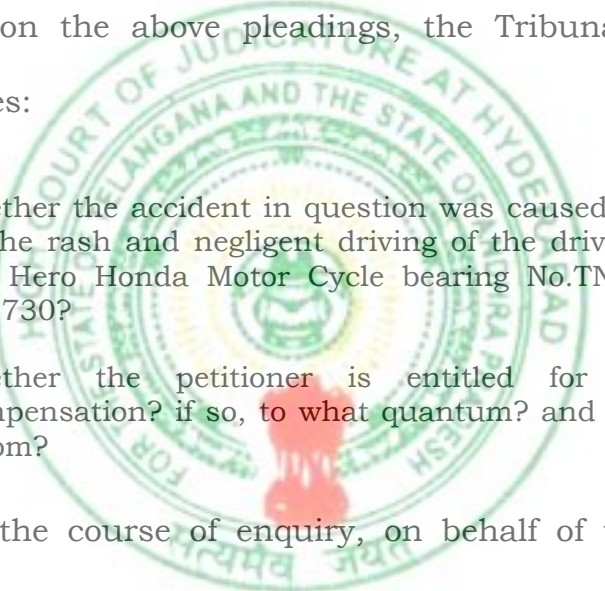
3. The facts leading to filing of the present appeal are, briefly, as follows:

On 20.02.2001 at about 11:30 A.M., the petitioner was proceeding to his house by walk. When he reached near Mitta Shop, Prakasam Road, Chittoor, the first respondent had driven the motorcycle bearing No.TN-10-A/2730 in a rash and negligent manner and dashed against the petitioner. Due to accident, the petitioner sustained fracture to his right leg. Immediately after the accident, the petitioner was admitted in Government Hospital, Chittoor, wherein he took treatment for long time. The petitioner also took treatment in Private Nursing Home in Chittoor and spent an amount of Rs.40,000/- towards medicines. The Station House Officer, Traffic Police Station, Chittoor, registered a case in Crime No.10 of 2001 for the offence under Section 337 I.P.C. against the first respondent. The motorcycle bearing No.TN-10-A/2730 was insured with the second respondent vide Policy No.01804/31/00/18421 as on the date of accident. Hence, the

petitioner filed a petition claiming compensation of Rs.2,00,000/- from the respondents.

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 accident occurred due to the negligent act of the petitioner and there was no negligence on the part of the rider of the motorcycle. The petitioner sustained simple injuries. The amount of compensation claimed by the petitioner is on higher side. Hence, the petition is liable to be dismissed.

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

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- (1) Whether the accident in question was caused due to the rash and negligent driving of the driver of the Hero Honda Motor Cycle bearing No.TN-10-A/2730?
 - (2) Whether the petitioner is entitled for any compensation? if so, to what quantum? and from whom?

6. During the course of enquiry, on behalf of the petitioner, P.Ws.1 to 3 were examined, and Exs.A.1 to A.8 and Ex.X.1 were marked. On behalf of the second respondent, no oral evidence was adduced and Ex.B.1 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 the rash and negligent driving of the motorcycle bearing No.TN-10-A/2730 by the first respondent, which resulted in injuries to the petitioner and awarded compensation of Rs.60,000/- to the petitioner.

8. Feeling aggrieved by the judgment and award of the Tribunal, the petitioner preferred the present appeal.

9. Learned counsel for the appellant-petitioner strenuously submitted that the Tribunal has not granted just and reasonable compensation to the petitioner. He further submitted that the right patella of the petitioner was removed due to the injuries sustained in the accident and the same was not considered by the Tribunal.

10. *Per contra*, learned counsel for the second respondent submitted that absolutely there is no material on record to establish that the right patella of the petitioner was removed due to the injuries sustained in the accident; therefore, it is a fit case to dismiss the appeal. He further submitted that the Tribunal granted just and reasonable compensation to the petitioner.

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

1. Whether the accident occurred due to the rash and negligent driving of the rider of the motorcycle bearing No. TN-10-A/2730? and
2. Whether the amount of compensation awarded by the Tribunal is just and reasonable?

Point No.1:

12. As per the finding of the Tribunal, the accident occurred due to the rash and negligent driving of the rider of the motorcycle bearing No.TN-10-A/2730 i.e., first respondent. For one reason or other, the respondents did not choose to file an appeal challenging this finding. The finding recorded by the Tribunal on point No.1 became final in view of non-filing of the appeal by the respondents.

POINT No.2:

13. The oral testimony of PWs.2 and 3 coupled with Ex.A.2 clearly reveals that the petitioner sustained fracture to right leg and one simple injury. As per the allegations made in the petition, the petitioner spent an amount of Rs.40,000/- towards medicines and treatment. The petitioner did not choose to file a single scrap of paper to prove that he took treatment in a Private Nursing Home. Mere assertion in the petition itself is not sufficient to substantiate the stand of the petitioner. As seen from the testimony of PW.2, the petitioner's right patella was removed prior to the accident. Ex.A.7 is the disability certificate. The petitioner incurred disability due to removal of right patella and not due to the injuries sustained in the accident that occurred on 20.02.2001. The Tribunal taking into consideration the nature of the fracture and injuries sustained by the petitioner, awarded an amount of Rs.60,000/- under different heads. The amount of compensation awarded by the Tribunal is just and reasonable. Viewed from any angle, I am of the considered view that the Tribunal awarded just and reasonable compensation to the petitioner. There are no grounds much less valid grounds to interfere with the findings recorded by the Tribunal.

14. In the result, the Appeal is dismissed. There shall be no order as to costs.

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

T.SUNIL CHOWDARY, J

Date: 27.03.2018

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