

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A.No.1843 of 2006

JUDGMENT:

This appeal is filed by the appellant-claimant under Section 173 of Motor Vehicles Act challenging the judgment and award, dated 19.04.2006 passed in O.P.No.1284 of 2003 on the file of the V Additional Metropolitan Sessions Judge – cum – Mahila Court – cum – XIX Additional Chief Judge, City Criminal Courts, Hyderabad.

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 20.02.2003 the petitioner along with his wife boarded the auto rickshaw bearing No.AP 9W 1731 at Balanagar to go to Gohilapur village. When the auto reached Gohilapur water tank, the driver of the water tanker bearing No.AP 9U 7520 had driven the same in a rash and negligent manner at high speed and hit the auto due to which the accident occurred. Against the driver of the water tanker, the Station House Officer, Dundigal police station registered a case in Cr.No.37/2003 under Section 337 IPC. Due to the accident, the petitioner sustained fracture to left and right humerus and took treatment as in-patient in Care Well General Hospital, Shahpur Nagar, from 20.02.2003 to 11.03.2003. The petitioner spent an amount of Rs.80,000/- towards extra nourishment and

medicines. Due to injuries, the petitioner sustained permanent disability. The first respondent is the owner of the water tanker bearing No.AP 9U 7520, which was insured with the second respondent company with effect from 06.07.2002 to 05.07.2003, therefore, the respondents 1 and 2 are jointly and severally liable to pay compensation of Rs.3,00,000/- to the petitioner with costs and 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 water tanker bearing No.AP 9U 7520 was not having valid and effective driving licence as on the date of accident. The accident occurred due to the negligence of the drivers of both vehicles, therefore, the owner and insurer of the auto are necessary and proper parties to this petition. 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 petitioner sustained injuries in a motor accident that took place on 20.02.2003 at 7.00 p.m. due to rash and negligent driver of the driver of the water tanker bearing No.AP 9U 7520?
2. Whether the petitioner is entitled for the compensation? If so, to what amount and from whom?
3. To what relief?

6. During the course of enquiry, on behalf of the petitioner, PWs.1 and 2 were examined and Exs.A.1 to A.8 were marked.

On behalf of the second respondent, no oral evidence was adduced but Ex.B1 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 driver of the water tanker bearing No.AP 9U 7520 and allowed the petition in part by awarding compensation of Rs.1,00,000/- in favour of the petitioner with interest at 7% per annum from the date of petition till the date of realisation.

8. Being not satisfied with the judgment and award of the Tribunal, the claimant preferred the present appeal.

9. Heard Sri V. Atchuta Ram, the learned counsel for the petitioner/appellant and Sri R. Venkat Rao, learned standing counsel for the 2nd respondent company.

10. Learned counsel for the petitioner submitted that the tribunal failed to consider the testimony of P.W.2, who is competent to speak about the disability incurred by the petitioner. He further submitted that the tribunal granted an amount of Rs.40,000/- towards medicines even though the petitioner filed medical bills worth of Rs.65,000/-. He further submitted that the tribunal has not awarded just and reasonable compensation, therefore, it is a fit case to allow the appeal. Per contra, learned counsel for the second respondent submitted that the tribunal ought not to have granted

compensation under the head of injuries and pain and suffering. He further submitted that P.W.2 is not a doctor, therefore, his testimony is no way helpful to the petitioner to prove the injuries sustained by him. He further submitted that the tribunal has awarded just and reasonable compensation, therefore, it is not a fit case to interfere.

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

1. Whether the finding of the Tribunal that the accident occurred due to rash and negligent driving of the driver of the water tanker bearing No.AP 9U 7520 is sustainable?
2. Whether the Tribunal has not awarded fair, just and reasonable compensation to the petitioner?

12. **POINT No.1:** Basing on the oral testimony of P.W.1 and Ex.A1 certified copy of FIR and Ex.A2 certified copy of charge sheet, the tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the water tanker bearing No.AP 9U 7520. P.W.1 is the injured person, therefore, he is competent to speak about the manner of the accident and the negligence on the part of the driver of the water tanker bearing No.AP 9U 7520. The findings recorded by the Tribunal are supported by oral and documentary evidence. I am fully endorsing with the findings recorded by the tribunal on this aspect. The finding recorded by the Tribunal on point No.1 became final in view of non-filing of the appeal by respondents 1 and 2. Hence, point No.1 is answered in favour of the appellant.

13. **POINT No.2:** As per the testimony of P.W.1, he sustained fracture to left and right humerus. He took treatment as inpatient from 20.02.2003 to 11.03.2003. In the cross-examination, he categorically admitted that as per the recitals of Ex.A3 discharge certificate, his hand was not paralysed.

14. In order to appreciate the rival contentions, this Court carefully scanned Ex.A3 discharge summary. The petitioner underwent operation on 24.02.2003. P.W.2 in unequivocal terms admitted that he is not an orthopaedic surgeon. He further submitted that he has not treated the petitioner. Viewed from any angle, the testimony of P.W.2 is no way helpful to the petitioner to establish that his right hand was paralysed. Absolutely, there is no material on record to establish that the petitioner incurred permanent disability. The petitioner produced medical bills (Ex.A4) worth of Rs.65,883/-. P.W.2 deposed that the medical bills are not supported by medical prescriptions. The fact remains that the petitioner took treatment as inpatient from 20.02.2003 to 11.03.2003 and underwent operation. In such circumstances, the possibility of spending of an amount of Rs.40,000/- is more probable. The tribunal taking into consideration the nature of injuries sustained by the petitioner and Ex.A4, awarded Rs.40,000/- towards medicines. The tribunal also granted an amount of Rs.50,000/- towards injuries and Rs.10,000/- towards pain and suffering. It is needless to say that the tribunal ought to have granted compensation under the head 'pain and suffering' only.

Due to fracture, the petitioner might not have attended his regular work at least for a period of two months. The petitioner might have lost his earnings for a period of two months. During the treatment period, the family members of the petitioner might have visited the hospital and spent some amount. It is a matter of common knowledge that in order to heal the wound, one has to spend some amount towards special diet. Taking all these aspects into consideration, the tribunal awarded an amount of Rs.60,000/-. The compensation awarded by the tribunal is just and reasonable. The petitioner has not made out any case for enhancement of the compensation as awarded by the tribunal. The petitioner failed to prove that he incurred permanent disability. Taking into consideration the facts and circumstances of the case, I am of the considered view that the tribunal awarded just and reasonable compensation. Therefore, it is not a fit case to interfere with the findings recorded by the tribunal and the appeal is liable to be dismissed.

15. In the result, the appeal is dismissed. There shall be no order as to costs. Consequently, Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

T.SUNIL CHOWDARY, J

3rd April 2018

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