

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A. No.917 of 2006

ORDER:

This appeal is filed under Section 173 of the Motor Vehicles Act (the Act) by the petitioner, challenging the judgment and award dated 05.12.2005 passed in O.P. No.399 of 2004 on the file of the Motor Vehicles Accidents Claims Tribunal-cum-District Judge, Karimnagar.

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 05.4.2003, the petitioner was proceeding to Godavarikhani from his native village Raginedu on his two wheeler bearing registration No.AP 15 L 220. When he reached near Mallialpalli village at about 9.00 p.m., DCM Van bearing registration No.AP 24 U 2966 was stationed on the road without switching on parking lights. The petitioner dashed the DCM Van as there is no possibility to observe the same from a reasonable distance. Due to the accident, the petitioner sustained injuries on various parts of the body. The accident occurred due to the rash and negligent act of the driver of the DCM van in parking the same on road without switching on parking lights. The petitioner took treatment as in-patient in Med-bone Trauma and Ortho-care Hospital, Godavarikhani for a long time. The petitioner sustained fracture to left leg. He spent an amount of Rs.60,000/- towards treatment and Rs.20,000/- towards extra nourishment. The petitioner took bed rest for a long time and thereby lost his salary. At the time of the accident, the petitioner was working as Short-

firer in Singareni Collieries Company Limited and was earning Rs.11,000/- per month. The Station House Officer, P.S. Ramagundam registered a case in Crime No.30 of 2003 under Section 337 of IPC against the driver of DCM Van bearing No.AP 24 U 2966. The vehicle bearing No.AP 24 U 2966, which belongs to first respondent, was insured with third respondent company as on the date of the accident. The second respondent is the Branch Manager of the third respondent company at the relevant point of time. Hence, the respondent Nos.1 to 3 are jointly and severally liable to pay compensation of Rs.3,00,000/- to the petitioner with interest at 18% per annum from the date of petition till the date of realization and for costs.

4. The first respondent filed counter denying all the averments made in the petition *inter alia* contending that the driver of the DCM Van stationed the same on the road by switching on the parking lights. The accident occurred due to rash and negligent driving of the two wheeler by the petitioner and there was no negligence on the part of the driver of the DCM Van. The amount of compensation claimed by the petitioner is highly excessive and exorbitant. The DCM Van is validly insured with the third respondent; therefore, the third respondent has to indemnify the liability of this respondent.

5. The second respondent remained *ex parte*. The third respondent filed counter denying all the averments made in the petition *inter alia* contending that the accident occurred due to negligent driving of the two wheeler by the petitioner. The amount of compensation claimed by the petitioner under various heads is

highly excessive and exorbitant. Hence, the petition is liable to be dismissed.

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

- (1) Whether the accident took place due to rash and negligent driving of the vehicle bearing registration No.AP 24-U 2966 by its driver?
- (2) Whether the petitioner is entitled for compensation, if so, to what amount and from whom?
- (3) To what relief?

7. During the course of the enquiry, on behalf of the petitioner P.Ws.1 to 3 were examined and Exs.A1 to A9 were marked. On behalf of the respondents, no witness was examined and no document was marked.

8. On appraisal of the oral and documentary evidence available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent act of the driver of the DCM Van, which resulted in injuries to the petitioner, and allowed the petition in part by awarding compensation of Rs.44,800/- directing the respondent Nos.1 to 3 to pay the same with interest at 7.5% per annum from the date of petition till the date of realisation. Being not satisfied with the quantum of compensation awarded by the Tribunal, the petitioner preferred the appeal.

9. The contention of learned counsel for the petitioner-appellant is three fold:- (1) the Tribunal failed to consider that due to injuries sustained in the accident the petitioner could not attend to his duties for a period of eight months; therefore he is entitled for loss of earnings for that period; and (2) the Tribunal has not considered the oral and documentary evidence in right perspective and granted meager amount

towards compensation; therefore it is a fit case to allow the appeal awarding compensation as claimed by the petitioner. *Per contra*, learned counsel for the third respondent submitted that the petitioner has not produced any document to prove that he took bed rest for a period of eight months. She further submitted that the Tribunal awarded just and reasonable compensation to the petitioner; therefore, it is a fit case to dismiss the appeal.

10. Basing on the rival contentions, the points that arise for determination in this appeal are:

- (1) Whether the accident occurred due to rash and negligent act of the driver of the DCM Van bearing No.AP 24 U 2966? and
- (2) Whether the Tribunal has awarded just and reasonable compensation or not?

Point No.1:

11. As seen from the testimony of P.W.1, the driver of the DCM Van stationed the same on the road without switching on parking lights. In the cross-examination of P.W.1, nothing was elicited to shake his testimony so far as the manner of the accident is concerned. As per the recitals of Ex.A.1 certified copy of the First Information Report and Ex.A.2 certified copy of the charge sheet, the driver of the DCM Van stationed the same on the road without switching on the parking lights. It is the duty of the driver of a vehicle to put on parking lights while parking the vehicle on a public road. Apart from P.W.1, the driver of the DCM Van is competent to say whether the vehicle was stationed on the road by switching on the parking lights or not. For the reasons best known, the first respondent-owner of the vehicle did not choose to examine the driver of the DCM Van. The third respondent also did not take any steps to examine the driver of the DCM Van or any

other person, who witnessed the accident, to dislodge the case of the petitioner. Basing on the oral testimony of P.W.1 and Exs.A.1 and A.2, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent act of the driver of DCM Van bearing No.AP 24U 2966. The finding recorded by the Tribunal on this point became final in view of non-filing of appeal by any of the respondents.

12. Having regard to the facts and circumstances of the case, I am of the considered view that the accident occurred due to rash and negligent act of the driver of DCM Van bearing No.AP 24U 2966. Accordingly, point No.1 is answered.

Point No.2:

13. As seen from the testimony of P.W.1, due to the accident, he sustained injuries on various parts of the body. His testimony further reveals that he took treatment in Government Hospital, Ramagundam. His testimony further reveals that he also took treatment in Sivaramakrishna Hospital, Karimnagar from 07.4.2003 to 25.4.2003. A perusal of Ex.A3 certified copy of the wound certificate reveals that the petitioner sustained fracture to lower end of left femur. Taking into consideration the nature of the injuries sustained by the petitioner, the Tribunal awarded an amount of Rs.15,000/- towards pain and suffering. Basing on Exs.A.7 to A.9 medical bills, medical prescriptions and X-ray films, the Tribunal awarded an amount of Rs.22,000/- towards medical expenses.

14. It is the case of the petitioner that he could not attend to duty for a period of eight months due to the injuries sustained by

him; therefore, he is entitled for loss of earnings for that period. As per the testimony of P.W.2—the Superintendent of Mines, the petitioner did not attend to the duty from 05.4.2003 to 30.12.2003. Admittedly, at the time of the accident, the petitioner was working in Singareni Collieries Company Limited. If really, the petitioner did not attend to the duties for a period of eight months, what prevented him to produce a document or evidence to that effect. P.W.2 also did not produce any document to prove that the petitioner applied leave for a period of eight months, due to the injuries sustained by him in a road accident. It is not uncommon to exaggerate the things in order to claim more compensation. In the absence of documentary evidence, much weight cannot be attached to the oral testimony of P.W.1. Taking these facts into consideration, the Tribunal arrived at a conclusion that the petitioner did not attend to the duty for a period of one month. As per the testimony of P.W.1, by the time of accident he was drawing a salary of Rs.11,000/- per month whereas the Tribunal awarded an amount of Rs.7,800/- towards loss of earnings. As per Ex.A.5 salary certificate, the gross salary of the petitioner is Rs.11,000/- per month. The Tribunal, having arrived at a conclusion that the petitioner might not have attended to his duties for a period one month, ought to have granted Rs.11,000/- in stead of Rs.7,800/- towards loss of earnings. The petitioner is entitled to Rs.11,000/- towards loss of earnings and the Tribunal committed error in granting Rs.7,800/-.

15. 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	15,000
2.	Medical expenses	22,000
3.	Loss of earning	11,000
	Grand total	48,000

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.48,000/- in stead of Rs.44,800/- as awarded by the Tribunal. The petitioner is entitled to the interest at 7.5% per annum on the enhanced amount of Rs.3,200/- from the date of petition till the date of realisation. The first respondent being the owner of DCM Van bearing No.AP 24U 2966 has not violated the terms and conditions of the policy so as to absolve the liability of respondent No.3-insurance company. The third respondent has to indemnify the liability of the first respondent. Therefore, the respondent Nos.1 to 3 are jointly and severally liable to pay compensation to the petitioner.

16. In the result, the appeal is allowed in part enhancing the quantum of compensation from Rs.44,800/- to Rs.48,000/- with interest at 7.5% per annum from the date of petition till the date of realisation. The respondents 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.

T.SUNIL CHOWDARY, J

April 02, 2018.
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