

HON'BLE SRI JUSTICE T. AMARNATH GOUD

M.A.C.M.A. No.1004 OF 2008

JUDGMENT:

This appeal is filed under Section 173 of M.V. Act, assailing the judgment and award dated 06.11.2007 passed in O.P.No.630 of 2006 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-XIII Additional Chief Judge, City Civil Court, Hyderabad.

2 For the sake of convenience, parties to this appeal will hereinafter be referred as they are arrayed before the Tribunal.

3 On 02.8.2004, while the petitioner was proceeding to his daughter's house on a cycle and when he reached Lakshmi talkies at about 12.30 PM, the first respondent – driver of tractor bearing No.AP 22 U 6721 and trolley No.AP 22 U 6722 came in opposite direction in a rash and negligent manner and dashed against the petitioner due to which the petitioner received multiple injuries. The crime vehicle was insured with the second respondent. Hence the petitioner filed O.P. claiming compensation of Rs.2.00 lakhs from both the respondents.

4 Second respondent filed counter denying the material averments made in the petition inter *alia* contending that the accident occurred due to the rash and negligent driving of the cycle by the petitioner and that the insurance company is not liable to pay any compensation.

5 During the course of trial on behalf of the petitioner, P.Ws.1 to 3 were examined and Exs.A.1 to A.7 were marked. On behalf of the second respondent – insurance company, Ex.B.1 policy was marked.

6 Having appreciated the material available on record, the Tribunal arrived at a conclusion that the accident occurred due to rash and negligent driving of the driver of the tractor and trolley and allowed the petition in part by awarding compensation of Rs.1,31,365/- and directed the respondent Nos.1 and 2 to deposit the same jointly and severally with interest at 7.5% p.a. Being not satisfied with the said amount of compensation, the claimant filed the present appeal.

7 Heard the learned counsel for the petitioner and the learned counsel for the second respondent.

8 The point that falls for determination in this appeal is:

“Whether the compensation awarded by the Tribunal is just and reasonable or not?”

Point:

9 The finding of the Tribunal that the accident occurred due to the rash and negligent driving by the driver of the lorry bearing No.PU 01 P 2369 became final in view of non-filing of appeal or cross-objections by the respondent Nos.1 and 2. Hence I am of the considered view that the accident occurred due to the rash and negligent driving of the driver of the tractor bearing No.AP 22 U 6721 and trolley No.AP 22 U 6722, which resulted injuries to the petitioner.

10 As per Ex.A.3 – C.C of the wound certificate, the petitioner sustained two abrasions; one on the left elbow and other on the chest, both are grievous in nature. Ex.A.7 is the discharge summary which shows that the petitioner was treated from 02.8.2004 to 11.8.2004. He was operated because of uncontrolled bleeding from spleen and kidney and hence spleen and one kidney of the petitioner were removed. Due to fracture and injuries, the petitioner might have suffered a lot. Taking into consideration the nature of injuries sustained by the petitioner, the Tribunal awarded an amount of Rs.50,000/- towards loss of vital organ. But in my considered view the petitioner is entitled to Rs.1.00 lakh for such injury.

11 The Tribunal awarded Rs.20,000/- towards pain and suffering, Rs.41,365/- towards medical bills, which in my considered view, is reasonable and needs no interference.

12 The Tribunal took the income of the petitioner as Rs.3,000/- and awarded Rs.12,000/- towards loss of income for a period of four months. However, since the injuries sustained by the petitioner are serious in nature and that the petitioner has also lost one kidney, in my considered opinion, he must have taken rest for a period not less ten months. Hence the petitioner is entitled to Rs.30,000/- towards loss of income.

13 The Tribunal has awarded only Rs.5,000/- towards extra nourishment and Rs.2,000/- towards transportation and Rs.1,000/- towards attendant charges. Taking into consideration the nature of the

fractures sustained by the petitioner, I am inclined to award Rs.20,000/- towards extra nourishment, transportation charges and attendant charges.

14 Thus, in all, the amount of compensation to which the petitioner is entitled, under various heads, is as follows:

Loss of viral organ:	Rs.1,00,000/-
Pain and suffering :	Rs.20,000/-
Medicines and treatment:	Rs.41,365/-
Loss of earnings:	Rs.30,000/-
Extra nourishment, Transportation charges, and attendant charges.	Rs.20,000/-
	=====
Total:	Rs.2,11,365/-
	=====

15 The compensation awarded under the above heads is just and reasonable to meet the ends of justice.

16 The tractor bearing No.AP 22 U 6721 and trolley No.AP 22 U 6722, which belongs to the first respondent, was insured with the second respondent as on the date of accident. Absolutely there is no material on record to show that the first respondent had violated the terms and conditions of Ex.B.1 insurance policy. Hence the liability on respondent No.1 is exonerated and respondent No.2 is liable to pay compensation of Rs.2,11,365/- to the petitioner together with interest at 7.5% p.a.

17 In the result, the appeal is allowed in part, the amount compensation awarded by the Tribunal is enhanced from Rs.1,31,365/-

to Rs.2,11,365/- with interest at 7.5% p.a. throughout. The respondent is directed to deposit the enhanced amount along with proportionate costs and interest within two months from the date of receipt of a copy of this order. On such deposit, the appellant is permitted to withdraw the entire amount. No order as to costs.

18 As a sequel, miscellaneous petitions pending in this appeal, if any, shall stand closed.

Date: 15.7.2019.
kvr

T.AMARNATH GOUD, J

