

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.510 of 2009

JUDGMENT:

This appeal is filed under Section 173 of Motor Vehicles Act by the claimant assailing the judgment and award dated 20.1.2003 passed in O.P.No.50 of 2000 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional Chief Judge, City Civil Court, Secunderabad.

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

3. The facts leading to filing of the present petition, briefly, are as follows: On 11.7.1999, the petitioner and her family members were proceeding to Bhadrachalam from Hyderabad in Maruthi car bearing No.AP 9Q 4244. When they reached near Manikyamma Gudem in Nalgonda District, the driver of the lorry bearing No.AEK 855 had driven the same in a rash and negligent manner and dashed against the car. The accident occurred due to rash and negligent driving of the driver of the lorry against whom the Station House Officer, Kattangur Police Station registered a case in Crime No.104 of 1999 under Section 337, 338 and 304A IPC. Due to the accident, the petitioner sustained deep cut bleeding injury on the fore head and other injuries on various parts of the body. The petitioner took treatment as inpatient in different hospitals for long time and spent huge amount towards medicines and treatment. By the time of the accident, the petitioner was aged about 22 years and a student. Due to the injury on fore head, the petitioner's face is disfigured and thereby she lost hopes of matrimonial prospects. The lorry bearing No.AEK 855, which belongs to the first respondent, was insured with the second respondent as on the date of the accident. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.2,00,000/- to the petitioner with interest and costs.

4. The first respondent remained *ex parte*.

5. The second respondent filed counter denying all the material averments made in the petition, *inter alia*, contending that the first respondent did not inform the factum of accident to this respondent in collusion with the petitioner. There is no obligation on the part of this respondent to indemnify the liability of the first respondent unless

the petitioner establishes that the driver of the crime vehicle was having valid and effective driving licence as on the date of the accident. The amount of compensation claimed by the petitioner under various heads is excessive and exorbitant. Hence the petition may be dismissed.

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

- i. Whether the accident took place due to rash and negligent driving of the lorry bearing No. AEK 855 by its driver?
- ii. What is the just amount that can be awarded to the petitioner and against whom?
- iii. To what relief?

7 During the course of trial, on behalf of the petitioner, P.Ws.1 and 2 were examined and Exs.A1 to A12 were marked. On behalf of the second respondent, no oral evidence was let in, but the copy of the insurance policy was marked as Ex.B.1.

8. On appraising 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 lorry bearing No.AEK 855 which resulted in injuries to the petitioner, and allowed the petition in part by awarding compensation of Rs.65,000/- directing the respondent Nos.1 and 2 to pay the same jointly and severally with interest at 9% p.a from the date of filing of the petition till the date of deposit. Being not satisfied with the quantum of compensation awarded by the Tribunal, the claimant preferred the present appeal.

9. Heard Sri P.Gangarami Reddy, the learned counsel for the claimant and Sri P.Harinath Gupta, learned standing counsel for the second respondent.

10. The contention of the learned counsel for the claimant is three fold:

i. The Tribunal disbelieved the oral testimony of P.W.2 (Doctor) and discarded Ex.A6 disability certificate on flimsy grounds;

iii. The amount of compensation awarded by the Tribunal is on lower side.

11. *Per contra*, the learned standing counsel for the insurance company submitted that the finding of the Tribunal that P.W.2 is not a competent person to issue disability certificate is based on sound principles of law. He further submitted that the Tribunal awarded just and reasonable compensation and therefore, the present

appeal is not maintainable.

12. Basing on the rival contentions the only point that falls for determination in this appeal is:

Whether amount of compensation awarded by the Tribunal is just and reasonable or not?

Point:

13. The finding of the Tribunal, on issue No.1, that the accident occurred due to the rash and negligent driving of the driver of the lorry which resulted in injuries to the petitioner became final, in view of non-filing of appeal or cross-objections by the respondents challenging the said finding.

14. Pending the appeal, this court dismissed the appeal against the first respondent on 05.12.2008 for non payment of batta. Now the crucial question that arises for consideration is whether this court can proceed against the insurer in view of dismissal of appeal against the owner of the offending vehicle. On this aspect, learned counsel for the petitioner has brought to my attention the decision in **Meka Chakra Rao v Yelubandi Babu Rao @ Reddemma**. In the said decision, question No.1 is as follows:

What is the effect of the non-presence of the owner of a motor vehicle (insured) at the appellate stage, if the appeal against the owner is dismissed for default for non-payment of 'batta' or for non-compliance with the orders of the Court?

Deciding the question in the affirmative, in Para 9 it was held as follows:

9. If the Claims Tribunal records a finding that the accident had taken place due to the rash or negligent driving of the driver of the motor vehicle and if such finding is not challenged either by the Insurance Company or by the owner of the motor vehicle, the question that arises in appeal filed against the orders of the Tribunal by the claimants is only with regard to the determination of just, fair and reasonable quantum of compensation and therefore **there cannot be any bar to decide the quantum of compensation against the Insurance Company even in the absence of owner of the vehicle to the extent of the statutory liability of the insurance**. But the quantum of compensation cannot be decided over and above the statutory liability of the Insurance Company in the absence of the owners, but the question of the statutory liability of the Insurance Company survives for consideration at the appellate stage.

15. The facts of the case on hand are akin to the facts of the case cited by the

learned counsel for the petitioner. Having regard to the facts and circumstances of the case and the principle enunciated in the case cited supra, this court is of considered view that in the appeal filed by the claimants the absence of owner of crime vehicle is not a bar to decide statutory liability on the part of the insurance company under the contract of insurance. Therefore, this matter can be proceeded, even though the appeal against the first respondent is dismissed for non-payment of batta, to decide the liability of the second respondent—insurance company.

16. The Tribunal awarded an amount of Rs.20,000/- towards pain and suffering, Rs.20,000/- towards disfigurement of face, and Rs.25,000/- towards medicines. As per the testimony of P.W.1, she sustained deep cut injury on the fore head about 5 inches length. As per Ex.A2 discharge summary issued by Yashoda Hospital, the petitioner sustained lacerated wound on the face. Due to the injury on the face, the petitioner might have suffered a lot. Taking into consideration the nature of the injury, the Tribunal rightly awarded Rs.20,000/- towards pain and suffering. The petitioner filed medical bills (Ex.A7) and prescriptions (Ex.A8) to the tune of Rs.89,000/-. In the cross-examination, P.W.1 denied the suggestion that the medical bills were created to claim more compensation. The Tribunal meticulously scrutinized the medical bills and arrived at a conclusion that some of the bills were not supported by prescriptions. The Tribunal rightly awarded Rs.25,000/- towards medicines. The Tribunal has not awarded any amount towards extra nourishment. Taking into consideration the nature of injury sustained by the petitioner, I am inclined to award Rs.3,000/- towards extra nourishment and incidental charges.

17. As per the testimony of P.W.2 (Doctor), there is a scar from the lower portion of fore head just below the hairline of the petitioner. The oral testimony of P.Ws.1 and 2 coupled with Ex.A5 disability certificate reveals that there is scar of 15 cms length covering 75% of the fore head of the petitioner. Even as per the testimony of P.W.2, he did not treat the petitioner, but he simply issued Ex.A5 disability certificate. The fact remains that by the date of accident, the petitioner is an unmarried girl of 22 years. Due to the scar on the fore head, the petitioner may face some difficulty at the time of marriage alliance. Taking into consideration, the nature of scar on the face, the Tribunal awarded an amount of Rs.20,000/- towards disfigurement. The learned counsel for the petitioner has drawn my attention to **Dinesh Singh v Bajaj Allianz General Insurance Company Limited** wherein it was held as follows:

13. The Tribunal awarded Rs.50,000 towards “loss of marriage

prospects". We feel it appropriate to enhance the same by another Rs.50,000, and on such enhancement, the appellant would be entitled to Rs.1,00,000 under the head "loss of marriage prospects".

By the time of the accident, the claimant herein is unmarried. Taking into consideration the facts and circumstances of the case, I am of the considered view that it is a fit case to grant an amount of Rs.75,000/- towards loss of marriage prospects due to disfigurement of face instead of Rs.20,000/- as awarded by the Tribunal. Thus, the petitioner is entitled the compensation as follows:

Rs.

1. Pain and suffering : 20,000
2. Extra nourishment : 3,000
3. Medicines and treatment : 25,000
4. Loss of marriage prospects : 75,000

Total : 1,23,000

The compensation of Rs.1,23,000/- awarded to the petitioner is fair, just and reasonable. Accordingly, the point is answered.

18. In the result, the appeal is allowed partly, enhancing the quantum of compensation from Rs.65,000/- to Rs.1,23,000/-. The petitioner is entitled to interest at 9% per annum on Rs.65,000/- and at 7.5% per annum on the enhanced compensation of Rs.58,000/- from the date of petition till deposit. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 23rd April, 2015.

YS