

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

MACMA No.643 OF 2005

JUDGMENT:

The claimant, having got dissatisfied with the award of Rs.5,500/- for the injuries sustained in a road accident occurred on 16.07.2001, as compensation in O.P.No.1097 of 2001 on 20.12.2004 by the Chairman, Motor Accidents Claims Tribunal-cum- IV Additional District & Sessions Judge(FTC), Ranga Reddy District (for short "Tribunal"), against the claim of Rs.1,00,000/- with interest @ 9% per annum laid under Section 166 of the Motor Vehicles Act, 1988 and the rules framed thereunder, preferred the present appeal.

2. The appellant herein is the claimant, while respondents 1 to 3 HEREIN, who are owner of the ambassador car bearing No.AP 9K 3136, its insured and insurer respectively, are respondents 1 to 3 respectively, in the O.P before the Tribunal.

3. For the sake of convenience, the parties herein are hereinafter referred to as arrayed in O.P. before the Tribunal.

4. The facts, in brief, are that on 16.07.2001 at about 12.30 PM, when the claimant was waiting for a bus to go to Dilshuknagar, an ambassador car bearing No.AP 9K 3136 coming from Hayathnagar and proceeding towards L.B.Nagar driven at high speed in a rash and negligent manner, dashed him from his behind due to which he sustained fracture to his right leg and was shifted to Aruna Hospital, L.B.Nagar and thereafter, he was taken to Osmania General Hospital, Hyderabad on 10.08.2001. The Station House Officer, L.B.Nagar Police Station, registered a case in Crime No.463 of 2001 under Section 337 of IPC and later laid charge sheet under Section 338 IPC. The claimant claims that he was aged 24 years, earning Rs.3,500/- per month and he sustained partial permanent disability on account of accident and,

therefore, sought Rs.1,00,000/- towards compensation, making respondents 1 to 3 jointly and severally liable to pay compensation.

5. The respondents 1 and 2 remained ex-parte before the Tribunal. The 3rd respondent opposed the claim, taken a specific stand as to violation of terms and conditions of the policy as the driver of the car did not possess valid driving licence at the time when the accident took place. In fact, the driver obtained the driving license only on 16.08.2001 i.e. one month after the said accident. Hence, the insurer sought to dismiss the claim of the claimant.

6. Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry, before the Tribunal, the claimant himself examined as PW.1 and marked Exs.A1 to A.9 to substantiate his claim as regards his entitlement for compensation claimed. On behalf of the respondents, none were examined, but Ex.B.1-copy of insurance policy was marked on consent.

7. On appraisal of evidence, both, oral and documentary, the Tribunal held issue No.1 in favour of the claimant, having found that only due to rash and negligent driving of the driver of the car, accident had occurred.

8 .On issue No.2 as to quantum of compensation, the Tribunal having considered Ex.A3-copy of medico legal record wherein the medical officer has recorded that no external injuries were present and while considering Exs.A4 and A6 observed that the medical officer concerned was not examined by the claimant-petitioner and what was recorded in Ex.A.4 is not in accordance with Exs.A.3 and A5-entries so far as description of nature of injuries are concerned, and, thus, discarded the stand of the petitioner that he sustained fracture of right leg and treating injuries as simple in nature, granted a sum of Rs.5,500/- with interest @ 9% per annum and directed the 3rd respondent-insurance company to pay initially and recover the same from the owner of the vehicle as per the finding recorded on issue No.1.

9. Being aggrieved by the compensation granted by the Tribunal, the claimant preferred the instant appeal contending that the Tribunal did not properly appreciate the injuries sustained by him, though, he sustained grievous injuries, but the Tribunal somehow, did not consider the same and sought to grant balance amount. Thus, it is clear from the grounds of appeal that the claimant has not challenged the finding recorded by the Tribunal to the extent that the insurance company initially to pay compensation and to recover from the owner of the vehicle. It is also pertinent to mention that no challenge is made by the insurance company-3rd respondent by way of preferring any appeal on the finding recorded by the Tribunal on Issue No.1 and in such an event, the said finding recorded by the Tribunal does not warrant interference.

10. Heard Sri B.Chinnapa Reddy, learned counsel for the claimant - appellant and Smt A.Anasuya, learned counsel for respondent No.3 – insurance company.

11. Since orders of this Court dated 02.01.2012 are not complied with by the claimant, the appeal against respondents No.1 and 2 was dismissed for default. However, the same is of no consequence to decide the quantum of compensation, in view of the decision of a Division Bench of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others** wherein it is held that:

“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.”

12. Learned counsel for the appellant contends that the Tribunal ignored Ex.A.2-charge sheet the contents of which discloses that the offence under Section 338 IPC was laid against the driver of the offending vehicle, which indicates that the petitioner sustained grievous injury. It is also his submission that no doubt the claimant not examined the doctor, who issued Ex.A.4 or Exs.A.3 and A5, but that cannot be a ground to treat the injuries as simple, in the presence of contents in Ex.A.3 and A.5 and also Ex.A.2. The learned counsel for the 3rd respondent-insurance company contends that the Tribunal did not commit any error in placing reliance on Ex.A.4-entries since in Ex.A.4, medical officer recorded that the injury was simple in nature and therefore, supports the order of the Tribunal while contending that the Tribunal ought not to have recorded the finding on issue No.4 directing the insurance company-3rd respondent to pay initially and to recover the amount from the respondents 1 and 2.

13. The short point that arises for consideration is whether the claimant-petitioner sustained grievous injuries or simple injuries. It is no doubt true that the Tribunal did find from Ex.A.4 that the doctor had not recorded any external injuries, but the Tribunal somehow over looked bottom portion which indicates that the final opinion was reserved pending radiologist's opinion. Thus, the claimant-petitioner was treated even without radiologist report. The claimant-petitioner ought to have obtained the final report. Even otherwise, the circumstances that the Station House Officer, L.B.Nagar Police Station filed charge sheet against the driver of the vehicle for the offence punishable under Section 338 IPC is sufficient enough to hold that the petitioner sustained grievous injury.

14. Coming to the nature of injury, Ex.A.5, out patient ticket dated 10.08.2001 shows that the claimant-petitioner sustained 32 week old fracture of both bones of right leg 1/3rd. In fact, the accident has taken place on 16.07.2001 and such intimation is in Ex.A.5. Therefore, the Tribunal was right in recording the finding that the claimant-petitioner failed to prove the nature of injury by examining the medical officer.

15. Next question that arises for consideration is whether the compensation awarded by the Tribunal is just and adequate?

16. The petitioner sought Rs.1,00,000/-. Admittedly, no permanent disability is found. Keeping in view the nature of injury sustained by him that being fracture of both bones of right leg, as such, the claimant is granted a sum of Rs.25,000/- towards injury and pain and suffering, Rs.5,000/- towards extra-nourishment and Rs.3,000/- towards transportation charges. Thus, the claimant is totally entitled for Rs.33,000/- as against Rs.5,500/- granted by the Tribunal.

17. Concerning interest, the claimant is entitled to interest at 7.5% per annum on the entire compensation amount from the date of petition till realisation as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**.

18. Accordingly, the Civil Miscellaneous Appeal is allowed in part modifying the impugned award passed by the Tribunal, by enhancing the compensation and reducing the rate of interest from 9% per annum to 7.5% per annum, as indicated above. There shall be no order as to costs.

19. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal shall stand disposed of.

A. SHANKAR NARAYANA, J

January 19, 2015.

Kvrm

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

MACMA No.643 OF 2005

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DATE: 19.01.2015