

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

MACMA No.541 OF 2005

JUDGMENT:

The claimant, having dissatisfied with the amount of Rs.16,000/-granted as compensation in M.V.O.P.No.1383 of 2002 by the order dated 20.10.2004 on the file of Chairman, Motor Accidents Claims Tribunal-cum- X Additional District (FTC), Guntur (for short "Tribunal"), against the claim of Rs.1,00,000/-, with interest at 9% per annum laid under Section 163-A of the Motor Vehicles Act, 1988, preferred the present appeal.

2. The appellant herein is the claimant, while respondents 1 and 2 herein, who are owner of the auto bearing No.AP 16 TT 2863 and insurer of the auto are respondents 1 and 2 in O.P before the Tribunal.

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

4. The facts, in brief, are that on 20.11.2002 at about 05.30 am, the petitioner was travelling in an auto bearing No.AP 16 TT 2863 from Chavali to Tenali and when the auto reached near Kuchipudi Lakulu, the driver driven the auto in a rash and negligent manner, due to which the auto turned upside down and fell in the side canal, resulting in the petitioner receiving fracture to his left leg and multiple injuries to his person. Concerned police registered a case in Crime No.107 of 2002. The petitioner, therefore, claimed various amounts under distinct heads, making respondents 1 and 2 jointly and severally liable to pay compensation.

5. Respondent No.1 remained ex-parte before the Tribunal. The 2nd respondent opposed the claim stating that the driver of the vehicle did not possess valid driving licence at the time of accident, that there was no valid permit for the auto to ply on the road and that the claimant colluded with the 1st respondent. Hence, the 2nd respondent - insurer sought to dismiss the claim of the petitioner.

6. Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry, before the Tribunal, the father of the injured was examined as PW.1, mother of the injured was examined as PW.2 and a doctor, who treated the injured, was examined as PW.3 and got marked Exs.A1 to A.4 and X.1 to prove the claim of the petitioner as regards her entitlement for compensation. On behalf of the respondents, RW.1 was examined and Ex.B.1-copy of insurance policy and Ex.B.2 letter issued to RTA Office, Mangalagiri, were marked.

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 offending vehicle, accident had occurred.

8. On issue No.2, while considering the evidence of PW.3-doctor, granted Rs.15,000/- towards pain and suffering, Rs.1,000/- towards medical expenses, and thus, a total sum of Rs.16,000/- was granted with interest at 9% per annum and directed the respondents to pay compensation jointly and severally to the petitioner.

9. Having got dissatisfied with the compensation granted by the Tribunal, the petitioner preferred the instant appeal contending in the ground of appeal that the Tribunal did not properly appreciate the evidence of PW.3, that he sustained 15% to 20% disability and suffering with partial permanent disability of not less than 20% and that the Tribunal erred in not granting adequate medical expenses, extra nourishment, attendant charges, transportation and other incidental expenses and sought to grant balance amount.

10. Heard Sri N.Subba Rao, learned counsel for the appellant/petitioner and Smt S.A.V.Ratnam, learned counsel for respondent No.2 – insurance company. So far as respondent No.1/owner of the auto is concerned, a Memo in USR No.209 of 2012 is filed stating that the notice sent to his is returned un-served. Therefore, in view of the orders, dated 02.01.2012, the case against respondent No.1 stands dismissed. 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**^[1] 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.”

11. Now, the short point that arises for consideration is whether the claimant is entitled to enhancement of compensation?

12. Perused order under challenge and the oral and documentary evidence let in by the petitioner. The reasons assigned by the Tribunal in rejecting partial permanent disability, even excluding the disability spoken to by PW.3, are based on appreciation of evidence. PW.3 did not give any reasons for the possibility of development of disability in future and the nature of difficulty, the petitioner would sustain on account of developing disability. Since the claimant sustained fracture of both bones of right leg above the knee and the accident took place at the age of 12 years, the petitioner is entitled to Rs.25,000/- towards pain and suffering, a sum of Rs.5,000/- towards extra-nourishment charges,

Rs.5,000/- towards attendant charges and Rs.1,000/- towards transportation charges, and thus, the petitioner is entitled to a total sum of Rs.36,000/- as against the amount of Rs.16,000/- granted by the Tribunal.

13. Concerning interest, the Tribunal granted interest at 9% per annum, but the claimant is entitled to interest at 7.5% per annum on the 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** [\[2\]](#).

14. Accordingly, the Appeal is allowed in part modifying the award and decree by enhancing the compensation and reducing the rate of interest as stated supra. There shall be no order as to costs.

15. As a sequel, Miscellaneous Applications, if any, pending shall stand disposed of.

A. SHANKAR NARAYANA, J

February 13, 2015.
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MACMA No.541 OF 2005

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DATE: 13.02.2015

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[\[1\]](#) 2001(1)ALT 495 (D.B.)

[\[2\]](#) 2013ACJ 1403 = 2013(4) ALT 35