

HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A. No. 818 OF 2006

JUDGMENT:

1. This Appeal is arising out of the order, dated 09.09.2005, in O.P. No.925 of 2002 on the file the Chairman, Motor Accident Claims Tribunal-cum-II Additional District Judge (Fast Track Court), Nizamabad (for short, 'the Tribunal').

2. Appellant herein is the petitioner-injured, and the 1st respondent herein is the owner of the Tata Sumo bearing No.AP1T 6078 and the 2nd respondent herein is its insurer, who filed the petition before the Tribunal, under Section 166(1)(a) of the Motor Vehicles Act, 1988 (for short, 'the Act'), claiming compensation of Rs.2,00,000/- on account of the injuries sustained by him in a motor vehicle accident.

3. The brief facts of the petition are that, on 04.04.2002, at about 10-15 a.m., while the appellant was proceeding on his scooter bearing No.AP25B 992 along with one T. Narasaiah towards Nizamabad side and when he reached near Gangasthan 'T' junction, the crime vehicle, which is coming in the opposite direction, being driven by its driver in a rash and negligent manner, dashed against the scooter of the appellant; as a result of which, the appellant sustained severe injuries. Immediately, he was shifted to the Hospital of Dr. T. Narsing Rao, Orthopaedist, where he underwent treatment as inpatient for twenty days. A case in Crime No.69 of 2002, for the offences under Sections 337 and 338 I.P.C.,

was registered by the Nizamabad Rural P.S. against the driver of crime vehicle. Hence, claimed compensation of Rs.2,00,000/-.

4. Respondent No.1, owner of the crime vehicle, remained *ex parte* before the Tribunal.

5. Respondent No.2 filed written statement denying the rash and negligent act on the part of the driver of the crime vehicle contending that the driver of the crime vehicle was not holding valid driving license to drive the vehicle and further contended that the quantum of compensation claimed by the appellant is excessive and exorbitant and prayed for dismissal of the petition.

6. The Tribunal, on consideration of the pleadings and evidence of the witness PW.1 and the documents Exs.A-1 to A-6 and Ex.B-1, on behalf of the 2nd respondent, passed an Award granting compensation of Rs.30,000/- with proportionate costs and interest at the rate of 7.5% p.a. from the date of petition till realization making both the respondents jointly and severally liable to pay the compensation.

7. Being aggrieved by the quantum of compensation, the appellant preferred the instant Appeal seeking enhancement of the compensation.

8. Heard arguments of Mr. K. Mahender Reddy, learned counsel for the appellant. The claim against respondent No.1, owner of the crime vehicle, was dismissed for default *vide* order of

this Court on 27.04.2016. No representation on behalf of the 2nd respondent-insurance company.

9. Learned counsel for the appellant submits that the claim against respondent No.1, owner of the crime vehicle, was dismissed for default. Mr. R. Venkat Rao, learned standing counsel for the 2nd respondent-insurance company, is not present and, hence, without hearing the arguments of 2nd respondent-insurance company the Appeal cannot be heard and decided and in support of the same relied on a decision of this Court in *Meka Chakra Rao Vs. Yelubandi Babu Rao @Reddemma and others*¹.

10. Admittedly, notice is served against the 2nd respondent-insurance company but none appeared on its behalf. However, since this is a matter pertains to the year 2006, this Court deems arguments are heard on behalf of 2nd respondent.

11. Now, the point for consideration in this matter is, whether there are sufficient grounds for enhancement of the compensation?

12. Admittedly, the Tribunal answered both the issues in favour of the appellant holding that the accident occurred due to rash and negligent driving of the driver of crime vehicle, awarded an amount of Rs.30,000/- as against his claim of Rs.2,00,000/- under various heads, which is shown below in the tabular form:

¹ 2001 (1) ALD 453 (DB)

Sl.No.	Name of the Head	Compensation awarded
01.	Two grievous injuries	Rs.20,000/-
02.	Pain and suffering	Rs.5,000/-
03.	Medicines and extra nourishment	Rs.5,000/-
TOTAL		Rs.30,000/-

13. On consideration of the evidence on record, it is obvious that the appellant had not examined the medical officer, who treated him. However, it is evident from Para 8 of the order of the Tribunal that the appellant was admitted in the hospital of Dr. T. Narsing Rao, Orthopedic Surgeon, and underwent treatment as inpatient for 20 days and spent an amount of Rs.50,000/- towards medical expenses. It is also the evidence of PW.1 that he had taken treatment from Dr. Vittal Goud of Mulpally for about one year and had incurred an amount of Rs.35,000/-. Ex.A-3 is the injury certificate issued by Civil Assistant Surgeon, Government Hospital, Nizamabad showing the fracture of his right leg and right clavicle; Ex.A-4 is the bill issued by Dr. Vittal Goud and Ex.A-5 is the bunch of five automobile bills issued by Narendra Automobiles, Armoor showing purchase of spare parts by the appellant for repairing his scooter.

14. The Tribunal has disbelieved Exs.A-4 and A-5, medical expenditure incurred to an extent of Rs.3,030/- and also purchase of automobile spare parts to an extent of Rs.9,766/-, on the ground that the medical officer, who treated the appellant, and the person, who issued the receipt showing purchase of automobile spare parts, were not examined before the Tribunal. However, the Tribunal placing reliance on the evidence of PW.1 and Ex.A-3, believed that the appellant had suffered two grievous injuries *i.e.*,

fracture of right leg and fracture of right clavicle. The treatment undergone by the appellant in Government Hospital, Nizamabad is also believed by the Tribunal. Thus, the Tribunal duly considering the evidence on record awarded compensation of Rs.30,000/-.

15. No doubt, the award of the Tribunal is based on some material but, however, the Tribunal could have awarded some more amounts under the relevant heads keeping in mind the pain and suffering, notional medical expenditure, attendant charges and mental trauma. Hence, this Court feels to enhance the compensation further.

16. The following is the tabular form showing the amount of compensation awarded by the Tribunal and enhanced by this Court under each head:

Sl.No.	Name of Head	Awarded by Tribunal	Awarded by this Court
01.	Two grievous injuries	Rs.20,000/-	Rs.40,000/-
02.	Pain and suffering	Rs.5,000/-	Rs.20,000/-
03.	Medical expenses, attendant charges, extra nourishment and conveyance	Rs.5,000/-	Rs.15,000/-
TOTAL		Rs.30,000/-	Rs.75,000/-

17. Accordingly, the Appeal is allowed in part, enhancing the compensation awarded by the Tribunal from Rs.30,000/- to Rs.75,000/-, keeping in tact the rate of interest awarded by the Tribunal.

18. As a sequel, miscellaneous petitions, pending if any, shall stand closed as infructuous.

G. SHYAM PRASAD, J

Date: 20.12.2016.
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HON'BLE SRI JUSTICE G. SHYAM PRASAD

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