

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.Nos.1402 AND 1434 OF 2005

COMMON JUDGMENT:

The former appeal is preferred by the Oriental Insurance Company Limited, which figured as respondent No.3 in M.V.O.P.No.700 of 2000 on the file of Motor Accidents Claims Tribunal – cum – II Additional District Judge, East Godavari, Rajahmundry, aggrieved by the order and decree, dated 21.03.2005, mainly on the grounds that the Tribunal, somehow, fastened liability on the driver and owner of the offending vehicle, which was insured with it and the quantum of compensation granted by it was excessive. The latter appeal was preferred by the petitioner – claimant seeking enhancement of compensation on the ground that the Tribunal granted a meagre amount, though, he is entitled to the amount claimed by him.

2. The appellant in the former appeal, figured as respondent No.3 in the latter appeal, is respondent No.3, whereas respondent Nos.1 to 3 in the former appeal, figured as appellant and respondent Nos.1 and 2, respectively, in the latter appeal, are petitioner and respondent Nos.1 and 2, respectively, in the O.P. before the Tribunal.

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

4. The facts in brief are that, on 05.12.1999, the petitioner visited Rajahmundry on his personal work and having completed the same, while he was proceeding towards Rayavaram along with one Karri Sura Reddy and V. Sundara Rao in an Ambassador car bearing registration No.AP-5-D-7171 on the left side of the road on National Highway No.5 between Bommuru and Vemagiri and when he reached opposite Horlicks Factory at about 03:00 PM, a lorry bearing registration No.APD-7545 driven at high speed in a rash and negligent manner was coming in the opposite direction towards its extreme right side, on seeing the same, the driver of the car, to avoid collision, suddenly turned the car towards right side, but still the left side portion of the car was hit by the lorry and since the petitioner was sitting on the rear left side, he sustained fracture to his left hand and immediately, he was shifted to Swatantra Hospital, Rajahmundry. After giving first aid, he was shifted to NIMS Hospital, Hyderabad, where he had undergone surgical intervention on 06.12.1999 and was discharged on 17.12.1999 requiring him to attend follow up action for the purpose of physiotherapy and regular check up and thus, he was forced to stay at Hyderabad

for a week. Stating that he suffered compound fracture, dislocation of left elbow, fracture of left humerus and ulna, and sustained permanent disability of left hand, due to which, he was unable to carry weights and do normal works with left hand, sought a total sum of Rs.2,30,000/- as compensation under Section 166 of the Motor Vehicles Act, 1988.

5. Respondent Nos.1 and 2, who are driver and owner of the lorry, respectively, remained *ex parte*. Respondent No.3 – insurer opposed the claim disputing every plea raised by the petitioner.

6. Based on the said pleadings, in the direction of accounting for responsibility about the accident, the Tribunal has framed the following three issues:

“1) Whether the accident occurred due to the rash and negligent driving of the vehicle by its driver R-1?

2) Whether the petitioner is entitled to any compensation, if so, to what amount and against whom?

3) To what relief?”

7. During enquiry, petitioner examined himself as PW.1 besides examining one Villuru Sundararao as PW.2 and the Doctor as PW.3 on commission and marked Exs.A1 to A9 to substantiate the claim laid. On behalf of respondent No.3, no evidence, either oral or documentary, was let in to advance its stand.

8. On issue No.1, the Tribunal, on appraisal of the evidence on record, has recorded a finding in favour of the petitioner holding that due to the rash and negligent driving of the lorry driver, who is respondent No.1, the accident had occurred resulting in injuries to the petitioner. On issue No.2, the Tribunal, having analysed the evidence on record, particularly, Ex.A3 and the evidence of Doctor, who was examined as PW.3, though, observed that the petitioner has not produced any evidence with regard to his profession and his owning of agricultural lands and that he did not even refer to his income in his evidence, still granted Rs.500/- towards ambulance charges, Rs.1,200/- towards attendant charges, Rs.3,000/- towards transport charges, Rs.3,500/- towards expenses incurred by him while staying at Hyderabad, Rs.5,000/- towards removal of implants, Rs.10,000/- towards pain and suffering, Rs.1,00,000/- as claimed by the petitioner towards loss of both past and future earnings, including permanent disability, keeping in view, the various circumstances the petitioner was forced to take rest for six months at home, and Rs.23,237/- towards medical bills, as against the amount of Rs.90,000/- said to have been spent by the petitioner, thus, making a total of Rs.1,78,000/- as against the claim of Rs.2,30,000/- with interest at 7% per annum from the date of petition till the

date of realisation.

9. It is the aforesaid order which is under challenge in the instant appeals. In the former appeal, it is the submission of the learned counsel for Insurance Company that the Tribunal overlooked the fact that the petitioner's car driver contributed to the accident and though, the disability certificate was not filed by the petitioner to show that he sustained 25% disability, it has granted Rs.1,00,000/- towards loss of earnings and disability, which is contrary to law and therefore, sought to set aside the impugned judgment and decree. In the latter appeal, it is the submission of the petitioner that a meagre compensation was awarded overlooking the evidence of PW.3 and therefore, sought to grant the balance amount of Rs.52,000/-.

10. Heard Sri G. Purushotham Rao, learned Standing Counsel for the appellant – Insurance Company in former appeal, incidentally respondent No.3 in latter appeal and Sri K. Venkatesh, learned counsel for respondent No.1 in former appeal, incidentally appellant in the latter appeal. The former appeal was dismissed against respondent Nos.2 and 3, who are the driver and owner of the lorry, respectively, and in the latter appeal, the appellant has endorsed that the driver and owner of the lorry are not necessary parties. However, dismissal of

the former appeal against respondent Nos.2 and 3 is of no consequence as they suffered decree passed by the Tribunal by remaining *ex parte* and 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 was 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. The common points that arise for consideration in the instant appeals are:

(1) Whether the driver of the Ambassador car has contributed to the accident as pleaded by the Insurance Company; and

(2) Whether the compensation granted by the Tribunal is excessive and arbitrary as claimed by the Insurance Company or inadequate as claimed by the claimant.

Point No.1:

12. From a perusal of Exs.A1 and A2, which are the certified copies of F.I.R. and charge sheet, respectively, it is clear that the driver of lorry, coming in opposite direction of the ambassador car, since driven it in a rash and negligent manner occupying the right side portion of the road, instead of proceeding on left side of the road, without leaving any space for passage of the car proceeding on the left side, the driver of the car, to avert taking place of direct collision, without there being any alternative, was forced to take the car towards right side suddenly and took it towards right side, during which process, the left side front portion of the car was hit by the lorry and since the petitioner was sitting on the rear left side seat, sustained injuries. Thus, the very manner in which the accident had taken place, that being the car was being hit on its left side of the front side portion by the lorry, would give rise to an inference that the driver of car

in order to avert taking place of collusion, suddenly took the car to right side of the road and thus, negligence can only be attributed to the driver of the lorry, but not to the driver of the car, lest there would have been direct collusion giving rise to taking place of major accident. Therefore, the stand of the Insurance Company that the car driver has contributed to the accident is without any merit for the reason that the Insurance Company has not examined the driver of the lorry and in fact the driver of the lorry remaining *ex parte* is no excuse in taking out summons to him to examine him for substantiating its stand.

Point No.2:

13. So far as the compensation granted by the Tribunal is concerned, learned counsel for the Insurance Company submits that without there being any disability certificate proving partial permanent disability said to have been sustained by the petitioner, the Tribunal has granted Rs.1,00,000/-, which includes permanent disability also and thus, it went wrong in granting the said amount, but a perusal of the evidence on record would clearly show that the petitioner sustained 1) compound fracture, dislocation of left elbow, 2) lateral condylar fracture (left) humerus, 3) compound fracture left ulna M/L junction and the evidence of PW.3 would prove these injuries sustained by the petitioner, who has undergone surgical intervention for

fixation of rods. Further, as evidenced by Exs.A8 and A9 – X-Rays taken after operation of PW.1, the rods were found to be removed from the left upper limb. Thus, when kept in view, the three fractures sustained by the petitioner to his left upper limb, the surgical interventions and also the circumstances under which the petitioner was made to attend NIMS Hospital for review, not on one occasion, for physiotherapy to the left upper limb, it would give rise to an inference that the petitioner has not used his upper limb at least for six months, which would have caused inconvenience to attend his profession as legal practitioner in the Courts. Therefore, Rs.1,00,000/- granted towards loss of temporary earnings and for the three grievous injuries, as such, cannot be viewed as excessive and at the same time, it cannot be said that the amount granted was on lower side as contended by the learned counsel for petitioner - appellant in the latter appeal. Thus, the amount of Rs.1,78,000/- granted by the Tribunal under these circumstances can be construed as fair and adequate meeting the statutory mandate and no merit is found in the appeal filed by the Insurance Company as well as in the appeal filed by the petitioner seeking enhancement of compensation.

14. Thus, both the appeals are dismissed. There shall be no order as to costs.

15. As a sequel thereto, Miscellaneous Applications,
if any, pending in these appeals shall stand disposed of.

A. SHANKAR

NARAYANA, J

February 08, 2016.

MD

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