

HON'BLE DR. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.2168 OF 2006

JUDGMENT:

This appeal is filed aggrieved by the award and decree dated 26.06.2006 passed in O.P.No.1227 of 2003 on the file of the I Additional Metropolitan Sessions Judge-cum-XV Additional Chief Judge, Hyderabad, awarding compensation of Rs.59,186/- against the claim of Rs.1,50,000/-, made by the petitioner for the injuries sustained by her in a motor accident.

2. For the sake of convenience, the parties are referred to as arrayed before the Tribunal.

3. The case is as under:

On the intervening night of 25/26.03.2003, at about 1.30 a.m., while the petitioner was going from Kesavagiri towards Chandrayanagutta on foot, near Chandrayanagutta P.S., a DCM Van bearing No.AP.11.W.3989 (hereinafter referred as "the crime vehicle") came in opposite direction in a rash and negligent manner and dashed a Matador tempo bearing No.AP.12.3777, which was parked in front of the Police Station and also dashed the petitioner, as a result of which she fell down and sustained bleeding injuries all over her body. A Police constable who was on sentry duty witnessed the accident and he lodged a report in Chandrayanagutta Police Station. Petitioner was admitted in hospital and underwent treatment. She sustained fracture of right maxilla with haemorrhage fracture to head. She also sustained injury to her right eye. The case of the petitioner

before the Tribunal was that her husband died and she is the only person to look after her minor children; she spent an amount of Rs.10,000/- towards medicines, she was bedridden for about six months; so there was loss of income. It was also her case that she used to earn Rs.3,000/- per month by doing a private job; she lost her right eye; she became permanently disabled on account of the loss of vision in the right eye and also injury on the right shoulder; she is not able to do any job; thus, she claimed compensation of Rs.1,50,000/- from the respondents.

4. Respondent No.1 remained ex parte before the Tribunal. The 2nd respondent denied the allegations made by the petitioner. It was the case of the 2nd respondent that the accident occurred due to the negligence on the part of the petitioner and not due to the rash and negligent driving of the crime vehicle; the crime vehicle has no valid permit to ply on the road and the driver of the vehicle did not have permanent licence; thus the owner violated the conditions of the policy, and therefore, it is not liable to pay compensation.

5. Basing on the above pleadings, the Tribunal framed the following issues:

1. Whether the accident took place due to rash and negligent driving of the driver of DCM Toyota bearing No.AP.11W.3989?
2. Whether the petitioner is entitled for compensation, if so to what amount and from whom?

3. To what relief?

6. The petitioner was examined as P.W.1. In support of her case, she got Advocate Commissioner appointed to record the evidence of the Doctor who treated her. The Commissioner returned the warrant unexecuted, as the Doctor from whom the evidence was to be recorded was on leave. On her behalf, Exs.A.1 to A.12 were marked. Copy of the insurance policy was marked as Ex.B.1 with consent.

7. As regards issue No.1, the Tribunal held that, considering the evidence of P.W.1 coupled with the contents of FIR and charge sheet, i.e. Exs.A.1 and A.2 respectively, there was no hesitation in holding that the accident occurred due to the rash and negligent driving of the driver of the crime vehicle. As regards issue No.2, the Tribunal held that the 1st respondent, being the owner of the crime vehicle, is vicariously liable for the acts of the driver; the 1st respondent insured the crime vehicle with the 2nd respondent, who did not deny the insurance of the crime vehicle with it. The Tribunal further held that, since the insurance policy was subsisting as on the date of the accident, 2nd respondent had got statutory liability to indemnify the owner of the vehicle, i.e. the 1st respondent; thus the 1st and 2nd respondents are jointly and severally liable to pay compensation to the petitioner. Holding so, the Tribunal granted Rs.685.50 ps., towards purchase of medicines by the petitioner while undergoing treatment in Osmania General Hospital, covered by Ex.A.6-medical bills. With regard to extra nourishment, petitioner

was granted Rs.1,000/-. It was held that one attendant must have attended the petitioner while she was undergoing treatment in the hospital and must also have spent some amount towards transport charges; thus, the Tribunal awarded Rs.1,000/- to cover those expenses. In total, an amount of Rs.2,686/- was awarded by the Tribunal towards medical expenses, extra nourishment, attendant charges and other incidental expenses. As regards pain and sufferings, the Tribunal awarded an amount of Rs.25,000/- on account of the haemorrhage fracture to the head and loss of vision in the right eye and grievous injury on the right shoulder. The Tribunal held that though petitioner claimed that she was earning Rs.3,000/- per month at the time of the accident, she has not produced any evidence in proof thereof; thus notional income of Rs.15,000/- as specified in the schedule appended to 163-A of the Motor Vehicles Act was taken by the Tribunal for the purpose of ascertaining the loss of earnings due to the injuries caused in the accident. As there was fracture of the head, skull was exposed and the petitioner lost sight in the right eye, it was held that she would have been bedridden for about 6 months; thus loss of income was arrived at Rs.7,500/-, which was been granted under that head. As regards future earnings, taking into consideration the disability of the right eye and weakness of the right hand and fracture to right forehead, the Tribunal held that functional disability of the petitioner would be about 20% taking into consideration the disability of the petitioner. It was held that though petitioner stated that she was aged about 40 years at the time of the accident, as seen from Ex.A.11,

certificate issued by Sarojini Devi Hospital, she was aged about 56 to 58 years; hence the age as claimed by the petitioner, i.e. 40 years could not be true. Accordingly, the Tribunal held that age of the petitioner would be approximately between 56 to 58 years as on the date of the accident and arrived at the total loss of income on account of the injuries sustained in the accident at Rs.24,000/- and awarded the same.

8. The Tribunal accordingly allowed the O.P., in part awarding compensation of Rs.59,186/- against the claim made by the petitioner at Rs.1,50,000/- with proportionate costs payable by respondents 1 and 2 jointly and severally with interest @ 9% per annum from the date of petition till the date of realisation.

9. Heard the learned counsel for the petitioner and the learned counsel for the 2nd respondent. Appeal against the 1st respondent was dismissed for default vide order dated 05.07.2016.

10. Learned counsel for the petitioner would submit that petitioner has suffered five grievous injuries as also simple injuries, she was in hospital for more than two months and she has spent huge amount towards medical expenses; the petitioner was granted only Rs.59,186/- towards compensation and the same is very meagre and ultimately prayed to enhance the same.

11. On the other hand, learned counsel for the 2nd respondent- Insurance Company contended that the Tribunal, relying on the

evidence of P.W.1 and the documents marked as Exs.A.1 to A.12 granted just and reasonable compensation and there is no need to enhance the compensation as prayed by the petitioner and ultimately prayed to dismiss the appeal with costs.

12. There is no much contest with regard to the rash and negligent driving of the crime vehicle and the grievous injuries sustained by the petitioner as a result. The petitioner deposed before the Tribunal as P.W.1 and got marked Exs.A.1 to A.12. Ex.A.1 is the certified copy of the FIR, Ex.A.2 is the certified copy of the charge sheet. Ex.A.3 is the certified copy of medical opinion. Ex.A.4 is the certified copy of the medico-legal record. Ex.A.5 is the discharge chard. Medical bills are covered under Ex.A.6. All the documents clearly establish rashness and negligence on the part of the crime vehicle and also the injuries sustained by the petitioner in the accident. The Tribunal had elaborately dealt the evidence of P.W.1 as also the aforesaid documents and held that the petitioner suffered injuries due to the rash and negligent driving of the crime vehicle; as such, no opinion can be substituted. The petitioner had contended that she has suffered grievous injuries, but no Doctor has been examined in support thereof. The evidence of P.W.1 and the documents reveal that petitioner had suffered 5 injuries, i.e., 1) deep laceration 5 x 3 cm, on the left side of the forehead, skull exposed 2) contusion around right eye 3) large boggy mass on the right temporal region 4) deep laceration 15 X 10 cm on right shoulder 5) bleeding through nose. This is evident from

Ex.A.4 medico-legal record. Ex.A.3 is the certified copy of the medical opinion issued by the Superintendent, Osmania General Hospital certifying that the injuries suffered by the petitioner are grievous in nature. As per Ex.A.5, petitioner was admitted on 26.03.2003 and discharged on 01.05.2003 from Osmania General Hospital. There is a correction in the month. So, the Tribunal held that petitioner was discharged from the hospital on 01.04.2003. Ex.A.8 is the C.T. scan of the brain, which shows that there is a fracture of right maxilla with hemosinus. Fracture right frontal bone. Small extra axial collection in the right frontal convexity. Soft tissue edema in the right temporo-parietal region and in the right eyelid. Ex.A.10 confirms the injury on the right hand. Ex.A.11 is the certificate issued by Sarojini Devi Eye Hospital evidencing that the vision in the right eye of the petitioner was lost. As per Exs.A.5, A.8, A.9 and A.10, there was head injury and vision in her right eye was lost and she had also received shoulder injury. Taking the above injuries and the evidence into consideration, the Tribunal granted an amount of Rs.25,000/- towards pain and suffering, which appears to be very low. As per the above evidence, there are grievous injuries as also simple injuries as discussed above. As such, on this score, i.e., for injuries, pain and suffering, this Court deems it fit to award an amount of Rs.50,000/- as compensation. It is evident from the record that petitioner is a widow. She was doing some private job to meet her necessities. In view of the grievous injuries suffered by her, it can be safely concluded that she could not work for a period of three

months. On this score, amount of Rs.9,000/- is awarded towards loss of earnings at the rate of Rs.3,000/- per month. As seen from the evidence on record, the petitioner has lost vision in her right eye and there is also medical evidence to believe the same. From Exs.A.10 and A.11 would make it clear that she lost vision in the right eye. As per the record, she was around 60 years as on the date of the accident and treatment, which goes to show that she suffered permanent disability. The Tribunal awarded an amount of Rs.24,000/- towards loss of future earnings on account of the injuries sustained by her in the accident. On this score, an amount of Rs.50,000/- is awarded as compensation, as against the aforesaid amount awarded by the Tribunal. The Tribunal, while determining other heads such as medical expenses, awarded an amount of Rs.2,686/-. Though the petitioner is claiming Rs.10,000/- towards medical expenses, she did not file any document to substantiate the same. The amount of Rs.2,686/- towards medical expenses is based on the evidence on record and, as such, no other view can be substituted.

13. Accordingly, the impugned award is liable to be modified. As seen from the entire evidence on record, the crime vehicle is insured with the 2nd respondent-Insurance Company and there was valid insurance in original and Ex.B.1 is a copy of the insurance policy. There is no evidence as to the owner violating terms and conditions of the insurance policy. The Tribunal had also given elaborate reasons to make the respondents jointly and severally liable to pay compensation

to the petitioner. The appeal against the 1st respondent was dismissed for default by order dated 05.07.2016. At this juncture, it is apposite to refer the decision of a Division Bench of this Court rendered in **Meka Chakra Rao vs Yelubandi Babu Rao @ Reddemma and others**¹ wherein it is held as under:

“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.

14. In the result, the compensation awarded by the Tribunal to the petitioner is enhanced from Rs.59,186/- to Rs.1,11,686/-. It is evident from the record that the Tribunal has granted 9% interest per annum on the compensation awarded, but in view of the decision of the

¹ 2001 (1) ALT 495 (D.B.)

Hon'ble Supreme Court in **Rajesh v. Rajbir Singh**², petitioner is entitled for interest at 7.5% per annum from the date of claim petition till realization.

15. In the result, the appeal is allowed in part modifying the award and decree under challenge by enhancing the compensation from Rs.59,186/- to Rs.1,11,686/- (Rupees One Lakh Eleven Thousand Six Hundred and Eighty Six only) with interest at 7.5% per annum from the date of filing of claim petition, till realization.

Miscellaneous applications, if any, pending in this appeal shall stand closed.

March 3, 2017
MRR

Dr. SHAMEEM AKTHER, J

² 2013ACJ1403 = 2013(4) ALT 35