

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

MA.CMA.NO.881 OF 2007

JUDGMENT

This appeal is filed by the claimant/injured against the order and decree dated 17.3.2007 passed by the Motor Accidents Claims Tribunal –cum- IV Additional District Judge (FTC), Mahabubnagar, seeking enhancement of compensation.

The averments in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 are that on 28.4.2001 at about 4.00 p.m., the claimant and his family members boarded the jeep bearing No.AP21-A-4899 for site seeing at Srisailam Project. After completion of site seeing and while the claimant and his family members were returning to Srisailam from dam, at about 6.15 p.m., the jeep met with the accident near second U Turn on Sunipenta-Srisailam road, due to the negligence of jeep driver, as he was turning the tape recorder while driving the jeep. As a result, the jeep went down into hillock valley and dashed against a tree. In the said accident, the claimant and others sustained injuries and immediately the claimant was shifted to Government Project Hospital, Sunnipenta for treatment. On receipt of information, the Srisailam II Town Police, registered the case in Crime No.17/01 under Sections 337 and 338 of IPC against the driver of jeep and investigated the case. At the time of accident, the claimant was aged 32 years and was hale and healthy and earning an amount of Rs.4,000/- per month as Peerless agent and contributing the same to the family. After the accident, he was shifted to Government Project Hospital, Sunnipenta and later, he has taken treatment in different private hospitals and spent

Rs.15,000/- towards treatment. Due to accident, he sustained multiple injuries all over the body and he suffered much physical pain and mental agony, apart from monetary loss. Therefore, under all the heads, the claimant claimed an amount of Rs.50,000/-.

The owner of the crime vehicle remained ex parte and the insurer of the said vehicle filed counter affidavit and denying the averments made in the claim petition, further contended that the claimant was traveling as gratuitous passenger, which amounts to violation of policy conditions and, therefore, the insurance company is not liable to pay compensation and sought to dismiss the claim against it.

Based on the above averments, the Tribunal framed the following issues for consideration:

1. Whether the accident was occurred due to rash and negligent driving of the driver of the jeep bearing No. AP 21-A-4899?
2. Whether the petitioner is entitled to compensation from the respondents and if so, to what amount and against whom?

To prove his claim, the claimant got examined himself as P.W.1 and got marked Exs.A-1 to A-6. On behalf of the insurance company, Ex.B-1, copy of insurance policy was marked and no oral evidence was adduced.

Considering the evidence on record, the Tribunal held that accident occurred due to rash and negligent driving of the driver of the crime jeep and in the said accident, the claimant sustained injuries. The Tribunal awarded an amount of Rs.10,000/- towards pain and suffering; Rs.3,000/- towards medical expenditure, Rs.2,000/- towards extra-nourishment. Taking the income of the

claimant at Rs.3,000/- per month and that, as he has taken bed rest for two months, awarded an amount of Rs.6,000/- towards loss of earnings. Thus, in all the Tribunal awarded an amount of Rs.21,000/- with interest at the rate of 7.5 per cent per annum from the date of the petition, till date of realization. The Tribunal further found that the owner of the crime jeep obtained the policy for private purpose, but plied it as taxi and thus it amounted to violation of policy conditions. Relying on the judgment of the Apex Court in **NATIONAL INSURANCE COMPANY vs. BALJIT KAUR¹**, the Tribunal directed the insurance company to pay at the first instance, and later recover the same from the owner, without resorting to filing a fresh suit.

Not being satisfied with the quantum, the claimant preferred the present appeal.

The learned counsel for the appellant/claimant stated that the claimant suffered fracture to his left radius ulna and was bedridden for two months. But the Tribunal awarded only an amount of Rs.10,000/- for pain and suffering, which is quite unreasonable and, ultimately prayed to enhance the compensation to Rs.50,000/- as prayed in the claim petition.

The owner of the vehicle remained ex parte before the trial court and even before this court, the appeal against him stood dismissed for fault. As per the judgment of the Division Bench of this court in **MEKA CHAKRA RAO v. YELUBANDI BABU @ REDDEMMA AND OTHERS²** dismissal of the appeal for

¹ 2004 TAC 366

² 2001(1) ALT 495 (DB)

default against the owner of the vehicle is of no consequence to decide the quantum of compensation.

Mr. N.J.Sunil Kumar (10803), Advocate, on instructions from 2nd respondent – insurance company, contended that the Tribunal taking into consideration, the facts and circumstances, awarded an amount of Rs.21,000/-, which is quite reasonable and that there are no merits in the appeal and ultimately prayed to dismiss the same.

In view of the above rival contentions, the point that arises for consideration is, whether the claimant is entitled for enhancement of compensation?

Heard the learned counsel and perused the record.

Based on the contents in the certified copies of FIR marked as Ex.A-1, charge sheet Ex.A-3, and wound certificate under Ex.A-2, coupled with the evidence of P.W.1, and as the insurance company did not lead any rebuttal evidence, the Tribunal had categorically recorded a finding of fact that accident occurred due to negligent driving of the driver of jeep bearing No. AP21-A-4899 and the claimant sustained injuries in the said accident. The present appeal is filed by the claimant seeking enhancement of compensation granted by the Tribunal.

Due to the accident, as per the wound certificate marked as Ex.A-2, the claimant sustained crack fracture of lower end of radius of left ulna. The court below based on evidence found that the claimant has taken rest for two months.

Under these circumstances, the amount of Rs.10,000/- granted by the Tribunal towards 'pain and suffering' does not co-relate with the injury sustained and its consequences. Therefore, under this head, the amount of compensation awarded by the Tribunal is enhanced to Rs.20,000/-.

In the present case, though the claimant stated that they incurred Rs.15,000/- towards treatment, and that he was earning an amount of Rs.4,000/- per month as Peerless agent, failed to file any documentary proof to substantiate his claim. Therefore, the Tribunal, considering the facts and circumstances, awarded an amount of Rs.3,000/- towards medical expenditure, Rs.2,000/- towards extra nourishment and further taking the income of claimant at Rs.3,000/- per month, loss of earnings for two months, awarded an amount of Rs.6,000/-. The same warrants no interference.

In the result, the compensation awarded by the Tribunal is enhanced to Rs.31,000/- with interest at the rate of 7.5 per cent per annum from the date of the petition till date of realization. On deposit the appellant / claimant is permitted to withdraw the entire amount. Other conditions imposed by the Tribunal remain unchanged.

The appeal is accordingly allowed in part. No order as to costs.

Miscellaneous petitions pending if any, shall stand closed.

DR.SHAMEEM AKTHER,J

DATE:27—06—2017
AVS