

HON'BLE Dr.JUSTICE SHAMEEM AKTHER

MACMA No.586 of 2007

JUDGMENT:

Heard learned counsel for the appellant/claimant. Though notice is served on the respondent-insurance company, none entered appearance. The claim against respondent No.1 – owner of the vehicle has been dismissed for default vide order dated 08.07.2016. The dismissal of claim against owner of the vehicle is not a bar to adjudicate this appeal on merits in view of the decision in **Meka Chakra Rao v. Yelubandi Rama Rao**¹. Hence, this appeal is being disposed of on merits.

2. Learned counsel for the appellant/claimant contends that the Tribunal has granted meager compensation of Rs.29,500/- against the claim made for Rs.3 lakhs. The Tribunal has granted the said meager compensation on all heads though there is rashness and negligence on the part of the driver of the crime vehicle and there is certificate of disability issued by the Medical Board showing the disability as 35 per cent.

3. The point for determination in this appeal is whether the appellant is entitled for enhancement of compensation as prayed for. As seen from the evidence of P.Ws.1 and 2 and the documents marked as Ex.A.3, certified copy of injury certificate and Ex.A.4, discharge certificate show that the appellant has suffered one grievous injury, i.e., fractures of both bones on the left leg at two places and other injuries. There is oral evidence of P.W.2, Dr.Ramulu, to substantiate the same. Exs.A.5 and A.6 are prescriptions, Ex.A.7 is the cash bill, Ex.A.8 – medical bills (5), Ex.A.9 is the positive

¹ 2001 (1) ALD 453

photo, Ex.A.10 is the disability certificate, Ex.A.11 is the X-ray film, Ex.A.12 is the insurance policy and Ex.A.13 is the case sheet. From all the aforesaid documents, it can be safely concluded that appellant has suffered multiple fractures and injuries due to the rash and negligent driving of the crime vehicle, i.e., lorry bearing No.APJ-3133, on which he was working as cleaner. Having appreciated all the facts and circumstances, the Tribunal has rightly held that appellant suffered injuries due to the rash and negligent driving of the aforesaid lorry. The Tribunal also held that the lorry was insured with respondent No.2/insurer and rightly tagged the liability on it. Those findings cannot be disturbed. The Tribunal had granted an amount of Rs.10,000/- for the fracture and dislocation of left elbow, Rs.13,249/- towards costs of treatment, Rs.2,000/- towards pain and suffering, Rs.1,000/- towards transportation charges, Rs.2,000/- towards loss of earnings during the treatment period and Rs.1,000/- towards expenses incurred for extra nourishment by the appellant. In all, the Tribunal granted Rs.29,500/- as compensation. The injuries suffered by the appellant are grievous, i.e. dislocation of left elbow. The Tribunal granted an amount of Rs.10,000/- for the injuries, which is meager and the same is required to be enhanced to Rs.20,000/-. On all other scores, the Tribunal has taken oral and documentary evidence into consideration and granted adequate compensation. Therefore, no interference is warranted in respect of those scores. The contention of the learned counsel for the appellant is that Ex.A.10 is the medical certificate issued by the Medical Board, which is the competent authority, certifying the disability suffered by the appellant as 35%. Though the disability is shown as 35%, the Tribunal has not taken the said document into consideration and granted no amount on that score. As

per the record, appellant has suffered grievous injury on his left elbow. The Medical Board ought not to have given certificate showing disability as 35% under Ex.A.10. The disability as shown, i.e., 35% does not correlate with the grievous injuries suffered by the appellant. Therefore, it is not appropriate to take the said document into consideration and award any compensation thereon. As the compensation of Rs.10,000/- for the injuries suffered by the appellant is now enhanced to Rs.20,000/-, it would meet the ends of justice.

4. In the result, the appeal is allowed in part, enhancing the compensation awarded by the Tribunal from Rs.29,500/- to Rs.39,500/- (Rupees Thirty Nine Thousand Five Hundred only) with interest at 7.5% per annum from the date of the claim petition till the date of realisation and costs. The appellant is entitled to withdraw the enhanced amount. Other directions of the Tribunal are retained.

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

Dr.SHAMEEM AKTHER, J

June 16, 2017
MRR