

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.72 OF 2006

JUDGMENT:

1. That the appellant-injured filed this Appeal seeking to enhance the compensation to Rs.2,00,000/-, aggrieved by the award of compensation of Rs.27,000/- in M.V.O.P. No.75 of 2002, dated 02.11.2005, by the Chairman, Motor Accident Claims Tribunal-cum-VII Additional District Judge (Fast Track Court), Nizamabad at Bodhan.

2. Submission of learned counsel for the appellant-claim petitioner is that the appellant has suffered multiple fractures including two grievous injuries and two simple injuries, underwent treatment as inpatient and incurred medical expenses to a tune of Rs.50,000/- and claimed compensation of Rs.2,00,000/-, which is quite reasonable. To substantiate his claim, the appellant deposed as P.W.1 and also examined P.W.2, the doctor and marked Exs.A-1 to A-14 i.e., criminal case record and his medical record, to prove the compensation claimed by him. The compensation of Rs.27,000/- awarded by the Tribunal is unjust and quite meager and, ultimately, prayed to enhance the compensation.

3. During pendency of the Appeal, the claim against the 2nd respondent-owner of the Auto Rickshaw bearing registration No.AP-25-T-8538 (for short, 'the crime vehicle') was dismissed for default *vide* order of this Court on 20.04.2016. However, dismissal of the appeal for default against him is of no consequence to decide the quantum of compensation in this appeal, in view of a Division Bench of this Court in ***Meka Chakra Rao Vs. Yelubandi Babu Rao @ Reddemma and others***¹, wherein it is held as follows:

¹ 2001(1) ALT 495 (D.B.)

"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 Company. 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."

4. Learned standing counsel appearing for the 1st respondent-insurer contended that there is no medical record to show that the appellant-petitioner had suffered grievous injuries and underwent treatment as inpatient. There are also no receipts to show the medical expenses incurred by him. Ex.A-14 – disability certificate is not genuine, it was obtained on 30.03.2003; whereas the accident is said to have occurred on 07.11.2001. Therefore, the Tribunal had given elaborate reasons, while dealing with the evidence on record and, ultimately, granted a just compensation of Rs.27,000/-, which is quite just and reasonable. In the circumstances of this case, it is not appropriate for this Court to interfere with the order under Appeal.

5. In view of the rival contentions put forth by both counsel, the following point came up for determination:

Whether the appellant is entitled for enhancement of compensation?

6. **POINT**: As per the evidence on record, on 07.11.2001 at about 09:00 p.m., while the appellant-petitioner along with others was traveling by the crime vehicle, belonging to the 2nd respondent, insured with the 1st respondent, driven by its driver in a rash and negligent manner, the crime vehicle turned turtle, resulting injuries to the appellant. On this score, there is a specific evidence of P.W.1. Ex.A-1 is the copy of F.I.R., Ex.A-2 is the copy of charge sheet and Ex.A-3 is the wound certificate, which clinchingly establishes the rashness and negligence on the part of the driver of crime vehicle. The Tribunal has analyzed the entire evidence on this score and held that the appellant suffered injuries due to the rash and negligent driving of the driver of crime vehicle, owned by 2nd respondent, insured with the 1st respondent. No other finding can be substituted.

7. As per the evidence of appellant, who was examined as P.W.1, more particularly Ex.A-3 – wound certificate, the appellant has suffered two grievous injuries and two simple injuries, which is corroborated with the evidence of P.W.2, the doctor who treated him and as such issuance of Ex.A-3 by P.W.2 cannot be doubted. There is also specific evidence of P.W.2 with regard to the treatment taken by the appellant in his hospital. Subsequently, he also issued Ex.A-14 – disability certificate showing that the appellant has suffered 50% permanent partial disability due to fracture of right side of mandible symposia region, fracture of left cyndlar and fracture of left premolar teeth, due to which the appellant cannot chew hard food items for certain period. He also deposed about issuance of Exs.A-3 – wound certificate, Exs.A-7 and A-11 - prescriptions and Ex.A-12 – x-ray film. PW.2 did not speak anything about the genuineness of issuance of Ex.A-8 - receipt for Rs.9,000/- and Ex.A-10 – four receipts for Rs.4,800/- in favour of the appellant. As P.W.2 failed to depose about the

genuineness of the above documents, the Tribunal has rightly discarded those medical bills.

8. As seen from the evidence on record, the appellant suffered only two grievous injuries and two simple injuries. The Tribunal had granted Rs.20,000/- for two grievous injuries, Rs.4,000/- for two simple injuries and Rs.3,000/- for pain and suffering. In all, the Tribunal granted a compensation of Rs.27,000/-, which appears to be on lower side and the same needs to be enhanced further. However, the Tribunal is justified in not granting compensation on other aspects *i.e.*, with regard granting compensation towards extra nourishment, transportation and medical expenses, since the submissions are not supported by any evidence.

9. As seen from the evidence on record, the crime vehicle is insured with the 1st respondent. Ex.B-1 copy of insurance was filed before the Tribunal. There is no dispute with regard to the crime vehicle in question having valid insurance with the 1st respondent, at the time of occurrence of accident. As per the evidence on record, there is no evidence of violation of any terms and conditions of the insurance policy by 2nd respondent, owner of the crime vehicle. Therefore, it can safely be concluded that the crime vehicle is validly insured with the 1st respondent-insurer, at the time of accident, and there was existence of valid insurance. Hence, Respondents 1 and 2 are jointly and severally liable to pay compensation to the appellant.

10. The following is the tabular form showing the amount of compensation awarded by the Tribunal and modified by this Court, if any, under each head:

Sl.No.	Name of Head	Awarded by Tribunal	Modified by this Court
01.	Grievous injuries	Rs.20,000/-	Rs.25,000/-

02.	Simple injuries	Rs.4,000/-	Rs.8,000/-
03.	Pain and suffering	Rs.3,000/-	Rs.4,000/-
TOTAL		27,000/-	Rs.37,000/-

11. Accordingly, the Appeal is allowed in part, enhancing the compensation awarded by the Tribunal from Rs.27,000/- to Rs.37,000/-, modifying the rate of interest from 9% to 7.5% p.a., relying on a decision of the Apex Court in ***Rajesh and others Vs. Rajbir Singh and others***², payable from the date of petition till the date of realization. The other conditions imposed by the Tribunal remain unaltered. The respondents 1 and 2 are jointly and severally liable to pay the compensation. After depositing the compensation amount, the appellant is permitted to withdraw the entire compensation amount.

12. As a sequel, pending miscellaneous petitions, if any, shall stand closed as infructuous. No order as to costs.

Dr. SHAMEEM AKTHER, J

Date: 07.04.2017.
Dsh

² 2013 ACJ 1403

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

288



21042017

M.A.C.M.A. No. 72 OF 2006

Date. 07.04.2017

DSH