

**HON'BLE Dr. JUSTICE SHAMEEM AKTHER**

**M.A.C.M.A. No.353 OF 2006**

**JUDGMENT:**

1. That the appellant-injured filed this Appeal seeking to enhance the compensation to Rs.94,000/-, aggrieved by the award of compensation of Rs.31,000/- in M.V.O.P. No.405 of 2004 dated 05.12.2005 by the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge, East Godavari at Kakinada (For short, 'the Tribunal').

2. Learned counsel for the appellant-claim petitioner submits that the appellant has suffered injuries to his abdomen, testicles and also sustained fracture to his pubic bone and urine track and undergone operation for urethra problem, incurred medical expenses and other incidental expenses, claimed compensation of Rs.94,000/-, which is quite reasonable. The Tribunal, without taking into consideration the above facts, awarded a compensation of Rs.31,000/-, which is unjust and quite meager and, ultimately, prayed to enhance the compensation.

3. Learned standing counsel appearing for the 3<sup>rd</sup> respondent-insurer contended that the appellant had suffered only simple injuries. The Tribunal has taken all the heads of compensation into account and granted a just compensation of Rs.31,000/-, assigning valid reasons. In the circumstances of this case, it is not appropriate for this Court to interfere with the order under Appeal and prayed to dismiss the Appeal.

4. During pendency of the Appeal, the claim against the 2<sup>nd</sup> respondent - owner of the Tractor and Trailer bearing registration No.AP27T 2164 and AP5Y 1380 (for short, 'the crime vehicle') was dismissed for default *vide* order of this Court on 14.07.2016. None entered appearance on behalf of the 1<sup>st</sup> respondent – driver of the crime vehicle.

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***<sup>1</sup>, wherein it is held as follows:

"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."

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:** There is no dispute with regard to the appellant-petitioner suffering injuries due to the rash and negligent driving of the crime vehicle, being driven by the 1<sup>st</sup> respondent, owned by the 2<sup>nd</sup> respondent and insured with the 3<sup>rd</sup> respondent, on 29.07.2004. Only dispute raised in this Appeal is with regard to quantum of compensation. Appellant-petitioner was aged 12 years as on the date of accident and is being represented by

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<sup>1</sup> 2001 (1) ALT 495 (D.B.)

his next friend and natural guardian, his mother, who was examined as P.W.1, before the Tribunal, and also examined P.W.2, eye witness, and got marked Exs.A-1 to A-5, and Ex.X-1, to prove the compensation claimed by him. There is evidence on record to show that the appellant suffered injuries to abdomen and testicles, which are simple in nature, supported by Exs.A-1, A-2 and Ex.X-1 and other medical record of the appellant. There is evidence on record to show that the appellant suffered fracture of pubic bone and urethra track, treated as inpatient in Government General Hospital, Kakinada, from 29.07.2004 to 06.08.2004, underwent operation for urethra problem on 29.07.2004.

7. The submission of learned counsel for the appellant is that though he was treated as inpatient under the care of Dr. D.V.S. Ramamurthy from 25.08.2004 to 19.10.2004, the same was not taken into consideration by the Tribunal as he failed to examine the doctor before the Tribunal. The Tribunal without taking this into consideration has granted Rs.25,000/- towards pain and suffering, Rs.3,000/- towards medicines, Rs.2,000/- towards incidental expenses and Rs.1,000/- towards extra nourishment.

8. Taking into consideration the nature of injuries suffered by the appellant-petitioner with regard to his age, and discomfort caused due to the injuries, the compensation awarded by the Tribunal is on lower side and the same can be enhanced further. Accordingly, for pain and suffering an amount of Rs.30,000/- is awarded. As per Ex.A-5, bunch of medical bills, it is shown that the medical expenses incurred are to a tune of Rs.4,755-96 p.s. It is not possible for the appellant or his parents to keep all the medical record for a long time. Taking this into consideration, an amount of Rs.5,000/- is granted towards medicines. The Tribunal has granted Rs.2,000/- towards incidental expenses. As seen from the record, due to the injuries sustained by the appellant, he would have traveled from

his house to the hospital and *vice versa*, for which he would have incurred some expenditure towards transportation. Therefore, Rs.5,000/- is awarded towards incidental and transportation expenses. The Tribunal has granted Rs.1,000/- towards extra nourishment. It is evident from the record that the appellant would have suffered at least for one month, due to his injuries; he might have also bedridden for a considerable time; naturally, he would have incurred some expenses towards extra nourishment. Therefore, an amount of Rs.5,000/- is granted towards extra nourishment. In all, the appellant is awarded an amount of Rs.45,000/-.

9. As seen from the evidence on record, Ex.B-1 – insurance policy marked on behalf of the respondents reveals that the crime vehicle, belonging to the 2<sup>nd</sup> respondent, being driven by the 1<sup>st</sup> respondent, was insured with the 3<sup>rd</sup> respondent as on the date of accident. As per the evidence on record, there is no evidence of violation of any terms and conditions of the insurance policy by Respondents 1 and 2, the driver and owner of the crime vehicle. As seen from the material available on record, there is nothing to take a different view with regard to tagging the liability on respondents 1 to 3. Hence, the Respondents 1 to 3 are jointly and severally liable to pay the awarded 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.    | Pain and suffering                     | Rs.25,000/-         | Rs.30,000/-            |
| 02.    | Medical expenses                       | Rs.3,000/-          | Rs.5,000/-             |
| 03.    | Incidental and Transportation expenses | Rs.2,000/-          | Rs.5,000/-             |
| 04.    | Extra Nourishment expenses             | Rs.1,000/-          | Rs.5,000/-             |
| TOTAL  |                                        | 31,000/-            | Rs.45,000/-            |

11. Accordingly, the Appeal is allowed in part, enhancing the compensation awarded by the Tribunal from Rs.31,000/- to Rs.45,000/-, keeping in tact the rate of interest awarded by the Tribunal as 7.5% p.a. payable from the date of petition till the date of realization. Since the appellant has become major by this time, he is permitted to withdraw the entire amount. The other conditions imposed by the Tribunal remain unaltered.

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

Date: 24.03.2017.  
Dsh

**Dr. SHAMEEM AKTHER, J**



**HON'BLE Dr. JUSTICE SHAMEEM AKTHER**

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Date. 24.03.2017

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