

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.487 OF 2006

JUDGMENT:

1. This Appeal is arising from an order, dated 29.11.2005, in O.P. No.523 of 2006 on the file the Chairman, Motor Vehicles Accidents Claims Tribunal-cum-Principal District Judge, Nellore (for short, 'the Tribunal').

2. Appellant herein is the petitioner-injured, 1st respondent herein is the owner and 2nd respondent herein is the insurer of the Lorry bearing No.ATN-2799, who filed a petition before the Tribunal, under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), claiming compensation of Rs.4,50,000/- on account of the injuries sustained by him in a motor vehicle accident occurred on 01.02.2002.

3. The brief facts of the petition are that, on 31.01.2002, while the appellant was going as a cleaner in the crime vehicle and, on 01.02.2002 at about 06:30 a.m., when it reached near Kattaleru Vagu of Tiruvuru village in Krishna district, the driver of the crime vehicle drove the same in a rash and negligent manner and dashed against the stationed Lorry bearing No.AP.13.T 6592; as a result of which, the appellant sustained multiple fractures on his left leg, thigh and other parts of the body. Subsequently, he was treated at Government Hospital, Tiruvuru thereafter underwent treatment at Vijayawada, Kavali and, later, at Chennai. For the injuries sustained by the appellant, he underwent continuous treatment and suffered permanent disability and loss of earnings. The appellant also incurred medical expenses to a tune of Rs.2,50,000/-. Hence, filed the petition seeking compensation of Rs.4,50,000/-. The Tribunal had granted a compensation of Rs.1,07,000/- with interest at the rate of 7.5% p.a.

4. Respondent No.1, owner of the crime vehicle, filed counter denying his liability and contended that 2nd respondent alone is liable to pay the compensation as the insurance is in force as on the date of accident.

5. Respondent No.2 filed counter denying the claim of the appellant and contended that there is no negligence on the part of the driver of crime vehicle and, finally, contended that the compensation claimed by the appellant is highly excessive and exorbitant.

6. The Tribunal, after framing the issues and, on consideration of the pleadings and evidence of the witnesses P.Ws.1 and 2 and the documents Exs.A-1 to A-17 and Ex.B-1, granted compensation of Rs.1,07,000/- with proportionate costs and interest at the rate of 7.5% p.a. from the date of petition till realization making both the respondents jointly and severally liable to pay the compensation.

7. Being aggrieved by the quantum of compensation, the appellant preferred this Appeal seeking enhancement of the compensation.

8. Heard the arguments of Mr. Ch. C. Krishna Reddy, learned counsel for the appellant. Though notice was served long back, none entered appearance on behalf of the 2nd respondent-insurance company on 20.01.2017 and also on 29.01.2017.

9. The appeal against the 1st respondent-owner of the crime vehicle was dismissed for default *vide* order of this Court on 22.04.2016. However, dismissal of the appeal for default against the respondent No.1-owner of the crime vehicle is of no consequence to decide the quantum of compensation in this appeal, in view of the decision 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:

"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."

10. Learned counsel for the appellant submits that the appellant has suffered grievous injuries and other injuries in the accident and when he claimed compensation of Rs.4,50,000/-, the Tribunal has granted the compensation of Rs.1,07,000/- only. He further submitted that though the appellant had suffered number of grievous injuries and was bedridden for more than six (6) months and spent an amount of Rs.2,50,000/- towards medical expenses, the Tribunal has not taken all the medical receipts and failed to consider the grievous injuries sustained by the appellant and granted a meager compensation.

11. So, in view of the submissions put forth by the learned counsel for the appellant, and the material available on record, the following points have come up for consideration:

¹ 2001(1) ALT 495 (D.B.)

1. Whether the appellant suffered injuries, due to the rash and negligent driving of the driver of crime vehicle bearing No.AP.13.T 6592?
2. Whether the appellant is entitled for enhancement of compensation?
3. To what relief?

12. **POINT No.1:** The specific evidence of P.W.1 is that he suffered injuries due to the rash and negligent driving of the crime vehicle. Ex.A-1 is the certified copy of F.I.R. in Crime No.7 of 2002; Ex.A-2 is the certified copy of charge sheet in C.C. No.174 of 2002; Ex.A-3 is the certified copy of wound certificate and Ex.A-4 is the certified copy of Motor Vehicle Inspector's report, which discloses that there is no mechanical defect in the crime vehicle. Hence, all these documents clinchingly establish that the appellant suffered injuries due to the rash and negligent driving of the crime vehicle but the Tribunal has appreciated the evidence on record in proper perspective and correctly held that the accident occurred due to the rash and negligent driving of the driver of the crime vehicle and, hence, no different opinion can be substituted on this point.

13. **POINT Nos.2 and 3:** Both these points are interconnected and go together. P.W.1 is the appellant-injured, who clearly and categorically deposed in his evidence that he sustained the injuries in the motor vehicle accident and the injuries sustained by him were got mentioned in Ex.A-3 - wound certificate, issued by the Civil Assistant Surgeon, Community Health Centre, Tiruvuru. On perusal of Ex.A-3 – wound certificate, the following injuries were found on the body of the injured-appellant:

1. Lacerated wound of about 10 C.Ms. x 2 C.Ms deep on left leg medial posterior aspect, bleeding present;

2. Swelling of about 20 C.Ms. x 20 C.Ms on left thigh;
3. Swelling wound of about 3 C.Ms. x ½ C.M. deep on left frontal region of scalp;
4. Lacerated wound of about 2 C.Ms x ½ C.M. deep medial to right eye brow;
5. Irregular lacerated wound of about 3 C.Ms. x 1 C.M. deep above the upper lip;
6. Small lacerated wound of about 1 C.M. x ½ C.M. deep on left ankle; and
7. Irregular lacerated wound of about 2 C.Ms. on left upper eye lid;

14. As per the averments in Ex.A-3, wound certificate, there is no reason for the Civil Assistant Surgeon to record those injuries unless the appellant-injured had suffered those injuries. The other documents were also marked on behalf of the appellant-injured i.e., Exs.A-5 to A-8 and A-9 are the bunch of medical bills and prescriptions issued by Vijaya Health Centre, Chennai; Ex.A-12 is the bunch of prescriptions and Echo Cardiography; Ex.A-13 and A-15 are the bunch of x-ray films; Ex.A-14 is the discharge summary; Ex.A-16 is the out-patient bill issued by Vijaya Health Centre, Chennai and Ex.A-17 is the disability certificate issued by P.W.2, the doctor who treated the appellant-injured in Chennai. P.W.2 also corroborated with the evidence of appellant and deposed about the injuries sustained by him and spoke about the genuineness of the above referred medical bills. The evidence of P.W.2 further reveals that the appellant was admitted in their institute on 05.02.2002 and got discharged on 23.02.2002 and on examination he found segmental fracture of left femur and compound fracture of both bones of left leg; fracture had taken place at three places of left lower limb of the appellant. During the

evidence, he identified the photo of the appellant filed before the Tribunal. He further deposed that external fixation was done on the left leg and intramedullary nailing with interlocking screws done on the left femur and external fixation was done on the appellant on 05.02.2002. He further deposed that implant removal surgeries were done twice on readmission of the appellant on 30.08.2003 and he further stated that due to the injuries the appellant had suffered 30% permanent disability of left lower limb. P.W.2, the doctor who treated the appellant, reiterated the same in his cross-examination. Nothing was brought on record to discredit the testimony of P.W.2. There is no reason for the doctor to give a false certificate and speak about the genuineness of the medical records filed by the appellant. Under these circumstances, it is safe to rely upon the evidence of P.W.2.

15. While assessing the payment of compensation, the Tribunal has granted an amount of Rs.40,000/- towards pain and suffering, Rs.32,000/- towards medical expenses, Rs.30,000/- towards disability and Rs.5,000/- towards loss of earnings at the rate of Rs.1,500/- p.m. While determining the compensation towards medical expenses, the Tribunal has examined the genuineness of Exs.A-5 to A-7 and Ex.A-10 and held that it is duplication of medical bills and rejected the amounts covered therein. Therefore, no different opinion can be substituted and hence Rs.32,000/- granted towards medical expenses by the Tribunal is retained.

16. As per the evidence of P.W.1 and the averments made in the claim petition, the petitioner was a cleaner in the crime vehicle and is aged about 23 years. As far as for the injuries suffered by the appellant and the treatment undergone by him for a considerable period, the Tribunal has granted a meager compensation of Rs.5,000/- at the rate of Rs.1,500/- p.m., towards loss of earnings, and the same needs to be enhanced.

Since the petitioner is a cleaner, it can be inferred that he is a skilled person and his monthly income can be taken as Rs.3,000/- p.m. in view of the principles laid down by the Apex Court in **Ramesh Singh Vs. Satbir Singh**², **New India Assurance Company Limited Vs. Smt. Shanti Pathak**³, **Oriental Insurance Company Limited Vs. Syed Ibrahim**⁴, **New India Assurance Company Limited Vs. Smt. Kalpana**⁵. For the injuries sustained by the appellant, the appellant did not work for six (6) months. Therefore, an amount of Rs.18,000/- is granted towards loss of earnings for six months at the rate of Rs.3,000/- p.m.

17. There is clear evidence of P.W.2 from Ex.A-17 that the appellant have suffered 30% permanent disability to his left lower limb. Considering the totality of the circumstances, the Tribunal has granted an amount of Rs.30,000/- towards disability. Looking at the entire evidence coupled with the evidence of P.W.1 and P.W.2 – the doctor, and Ex.A-17 - disability certificate showing 30% disability in left lower limb of the appellant, it can be safely concluded that the appellant has suffered 30% permanent disability. Taking the same into account, the appellant-injured can be granted an amount of Rs.90,000/- on this score.

18. Insofar as the amount of compensation of Rs.40,000/- awarded under the head of pain and suffering is concerned, the same is retained and, it needs no interference. It is relevant to state that the appellant-injured has undergone operations twice and is hospitalized for a considerable period but the Tribunal did not grant any compensation towards attendant charges, transportation and extra nourishment. On this score, the appellant is granted an amount of Rs.20,000/-.

² MANU/SC/7089/2008

³ MANU/SC/7776/2007

⁴ MANU/SC/7915/2007

⁵ (2007) 3 SCC 538

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

Sl.No.	Name of Head	Awarded by Tribunal	Awarded by this Court
01.	Medical expenses	Rs.32,000/-	Rs.32,000/-
02.	Attendant charges, Transportation and extra nourishment	---	Rs.20,000/-
03.	Permanent disability	Rs.30,000/-	Rs.90,000/-
04.	Loss of earnings	Rs.5,000/-	Rs.18,000/-
05.	Pain and suffering	Rs.40,000/-	Rs.40,000/-
TOTAL		Rs.1,07,000/-	Rs.2,00,000/-

20. Accordingly, the Appeal is allowed in part, enhancing the compensation awarded by the Tribunal from Rs.1,07,000/- to Rs.2,00,000/-, keeping intact the rate of interest *i.e.*, 7.5% p.a. awarded and other conditions imposed by the Tribunal as it is. Respondents 1 and 2 are jointly and severally liable to pay the compensation.

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

Dr. SHAMEEM AKTHER, J

Date: 10.02.2017.
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HON'BLE Dr. JUSTICE SHAMEEM AKTHER

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