

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No. 2104 OF 2006

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), by the appellant, who is the petitioner in O.P. No.1 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Adilabad (for short, 'the Tribunal'), having got dissatisfied with the award of compensation of Rs.1,31,011/- with interest at the rate of 7.5% per annum from the date of petition till realisation granted by the Tribunal, as against Rs.4,00,000/-, vide the order dated 06.07.2006, for the injuries sustained by him in a motor accident occurred on 26.10.2002.

2. The material on record reveal that on 26.10.2002, while the appellant being driver of a jeep bearing registration No.AP 1T 5905, was proceeding from Dasturabad to Narsapur along with some students to attend tournaments, at about 10-30 p.m., when the jeep reached Natraj Mill, Nirmal, a van bearing registration No.AP 25U 182 driven by its driver in a rash and negligent manner at high speed, dashed the right side of the jeep, due to which the appellant-petitioner received crush injuries to his forearm and immediately he was shifted to Government Hospital, Nirmal and thereafter, he was referred to NIMS, Hyderabad, where he took treatment and his right hand was amputated and he spent Rs.50,000/- towards medical expenses. The police concerned also registered the case in Crime No.144 of 2002 against the driver of

the van bearing registration No.AP 25U 182. The appellant-petitioner stated in the claim petition that he was hale and healthy at the time of the accident and he was an ex-serviceman and driver-cum-owner of the jeep and he used to earn Rs.5,000/- per month, but due to the amputation of his right hand, he lost his source of income and also suffered pain and mental agony. Hence, the appellant-petitioner claimed Rs.4,00,000/- as compensation from respondent Nos.1 to 3, who are the owner and insurer of the van and insurer of the jeep.

3. Respondent No.1-owner of the van remained *ex parte* before the Tribunal. Respondent No.2-insurer of the van and respondent No.3-insurer of the jeep filed separate counters before the Tribunal denying the averments made in the petition including the coverage of insurance policy for the van and the jeep and pleaded that the compensation claimed by the appellant-petitioner is high, excessive and exorbitant.

4. The Tribunal after considering the evidence of P.Ws.1 and 2 and the documents Exs.A.1 to A.8 and Ex.C.1, determined compensation as Rs.1,31,011/- and granted the same with interest at the rate of 7.5% per annum from the date of petition till realisation against respondent Nos.1 and 2, who are the owner and insurer of the van and dismissed the claim against respondent No.3-insurer of the jeep, which was owned and driven by the appellant at the time of the accident.

5. Heard both the learned counsel for the appellant-petitioner and the learned Standing Counsel for respondent No.2-insurer of the van, apart from perusing the material available on record. The appeal against respondent No.1-owner is dismissed on 05.07.2016 for default. However, dismissal of the appeal for default against the respondent No.1-owner of the vehicle is of no consequence to decide the quantum of compensation, in view of the decision of a Division Bench of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others**¹, wherein it is held that:

"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."

6. So far as the rashness and negligence on the part of the driver of the van is concerned, there is no much dispute. The evidence of P.W.1 and the documents Ex.A.1-attested copy of F.I.R.,

¹ 2001(1) ALT 495 (D.B.)

Ex.A.2-attested copy of charge sheet, Ex.A.3-attested copy of injury certificate, Ex.A.5-outpatient card issued by NIMS Hospital and Ex.A.8-copy of driving licence of the appellant clinchingly establish that there was rashness and negligence on the part of the driver of the van bearing registration No.AP 25U 182. The Tribunal rightly recorded the said finding by assigning reasons.

7. It is evident from the record that the Tribunal has granted Rs.1,31,011/-, i.e., Rs.15,000/- towards crush injury, Rs.1,000/- towards simple injury, Rs.86,400/- towards permanent disability, Rs.23,611/- towards medical expenses and Rs.5,000/- towards transportation to the hospital. As seen from the medical prescriptions and bills marked as Exs.A.7 and A.8 and the evidence of P.W.2-doctor, which also corroborates the evidence of P.W.1-injured, the Tribunal has considered all the medical bills and granted Rs.23,611/- towards medical expenses. Therefore, no enhancement is required under this head.

8. It is evident from the record that the appellant, while driving the jeep, suffered injuries. P.W.1 has specifically deposed the injuries suffered by him. P.W.2 has clearly and categorically deposed about the appellant suffering injuries as enumerated in the impugned order and further stated that the petitioner suffered 80% disability, but no disability certificate is filed before the Tribunal. In fact, there is a Medical Board in every district, which is consisting of a panel of doctors headed by the Chairman specialised in Orthopaedic to examine the persons and to issue disability certificates, and those certificates are being filed before

the Tribunal for determination of compensation, under the head of permanent disability, etc. In this case, there is no such exercise. But there is clear evidence of P.W.2 about the injury suffered by P.W.1, which resulted in the amputation of right hand and the disability assessed by the doctor is 80%. Admittedly, as seen from the entire evidence on record, it can be safely concluded that there was amputation of right hand of P.W.1 and disability suffered by him is permanent. In the circumstances of the case and in view of the age of the appellant, as he was more than 60 years old on the date of accident, taking the percentage of disability at 80% by the Tribunal is not proper in the absence of disability certificate and it can be safely concluded that the appellant suffered 50% permanent disability on account of the injuries sustained by him and in view of amputation of right hand. The petitioner was more than 60 years on the date of accident. Suitable multiplier for the persons between the age group of 61 years and 65 years is '7' as per the decision of the Hon'ble Supreme Court in **Sarla Verma and others v. Delhi Transport Corporation and another**². It is evident from the record that the appellant while driving the jeep, met with the accident and suffered permanent disability. Therefore, his earnings can be taken as Rs.4,000/- per month or Rs.48,000/- per annum, when multiplier '7' is applied, the compensation payable to the appellant-petitioner towards permanent disability at 50% comes to Rs.1,68,000/- (Rs.48,000/- x 7 x 50%). The appellant is entitled to the said amount of Rs.1,68,000/- towards 50% permanent

² (2009) 6 SCC 121

disability caused in the motor accident, as against the amounts of Rs.86,400/- towards permanent disability, Rs.15,000/- towards crush injury and Rs.1,000/- towards simple injury granted by the Tribunal. The Tribunal has granted Rs.5,000/- towards transportation to the hospital and no amount is granted towards extra nourishment and attendant charges. Therefore, a sum of Rs.9,000/- is granted towards extra nourishment and attendant charges including transportation to the hospital as against Rs.5,000/- granted by the Tribunal.

9. Thus, the mount of Rs.1,31,011/- granted by the Tribunal as compensation is enhanced to Rs.2,00,611/- with interest at the rate of 7.5% per annum from the date of petition till realisation. The appellant-petitioner is entitled to withdraw the entire amount of compensation. The order under challenge in this appeal shall remain unchanged in other respects.

10. Accordingly, this appeal is allowed in part modifying the order dated 06.07.2006 passed by the Tribunal, by enhancing the compensation, as indicated above. No order as to costs. Miscellaneous Petitions pending, if any, shall stand closed.

Dr. SHAMEEM AKTHER, J

Date: 02.02.2017

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