

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

Civil Miscellaneous Appeal No.3147 of 2004

JUDGMENT:

The present Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') seeking enhancement of compensation on the ground that the amount of Rs.1,00,000/- awarded by the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Kadapa (for short, 'the Tribunal') by his order dated 13.5.2004 in M.V.O.P. No.927 of 2001 as against the claim of Rs.8,00,000/- laid under Section 166 of the Act is very meagre.

2. Heard Sri D. Kodandarami Reddy, learned counsel for the appellant and Smt. S.A.V. Ratnam, learned counsel for the 2nd respondent-Insurance Company, and perused the material available on record. So far as the 1st respondent is concerned, appeal was dismissed for default on 8.2.2016, but the said dismissal is of no consequence in view of the decision of the Division Bench of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others**¹. So far as the 3rd respondent is concerned, notice served and none entered appearance.

3. For the sake of convenience, the parties will hereinafter be referred to as arrayed before the Tribunal.

¹ 2001(1) ALT 495 (D.B.)

4. The facts in issue are as under:

The petitioner-claimant, in fact, was travelling in a Jeep bearing No.AP-04-C-7083 and at about 10.30 a.m. when the Jeep reached Moolavanka turning, as it was going with passengers from Kadapa to Rayachoti, the Jeep driver was unable to control the speed and hit an R.T.C. bus bearing Registration No.AP-10-Z5653. But, the complaint was lodged by the driver of RTC Bus and the case was registered against the jeep driver by the concerned police and charge-sheet was also laid as during the course of investigation it came to light that due to rash and negligent driving of the jeep driver the accident had taken place. He claimed that he was treated for six months and he had undergone five operations, incurring an expenditure of Rs.3,25,000/-; Rs.17,000/- towards 'attendant charges'; Rs.15,000/- towards 'transportation charges' and he was running a medical shop, earning Rs.8,500/- per month. Since he suffered permanent disability and he is a graduate in pharmacy, he sought a compensation of Rs.8,00,000/-.

5. The 1st respondent, owner of the jeep, remained *ex parte*. The 2nd respondent – Insurer resisted the claim referring to what has been the outcome of the investigation, and, therefore, sought to exonerate it from the liability.

6. The 3rd respondent filed counter denying the liability on the ground that only due to rash and negligent driving of the jeep driver the accident occurred.

7. The Tribunal, on the basis of the said pleadings, framed the following three issues.

- (1) Whether the accident occurred due to rash and negligent driving of the jeep bearing No.AP-04-C-7083 and APSRTC bus No.AP-10-Z-5653 by their drivers?
- (2) Whether the petitioner is entitled for compensation and if so, to what amount and from whom?
- (3) To what relief?

8. During trial, the petitioner himself examined as P.W.1 and got examined the Doctor by name, Dr. Venkata Subbaiah as P.W.2, who issued Ex.A4-Disability Certificate.

9. The Tribunal on Issue No.1, from the assertions made in the chief-examination and the answers in the cross-examination of P.W.1 and also basing on the contents of Ex.A1—certified copy of FIR in Cr.No.132 of 2000 of C.K. Dinne P.S. and Ex.A3—certified copy of Charge-sheet, recorded a positive finding that only due to rash and negligent driving of the jeep driver the accident occurred and, accordingly, held the Issue in favour of the 3rd respondent.

10. On Issue No.2, the Tribunal disbelieved the evidence of P.W.2 as he admitted that he had no occasion to treat P.W.1 at all and also in view of the fact that all the internal injuries are cured by the time he examined P.W.1, and, thus, discarded Ex.A4-Disability Certificate issued by him showing 100% disability. The Tribunal, basing on the ruling in **M.Jayanna v. K. Radhakrishna Reddy**

(CMA No.161/2001, dated 21.10.2003) while discarding the Disability Certificate, disbelieved the evidence of P.W.2; even the bunch of medical bills and case summary and discharge card were also sidelined by the Tribunal on the ground that P.W.1 was not examined by the concerned Medical Officer. The Tribunal, however, noted that the medical bills issued by Sri Venkateswara Pharmacy and Apollo Pharmacy for an amount of Rs.44,847-70 ps and the Final Bill, dated 11.12.2000, issued by SVIMS, Tirupati, is for Rs.16,464/- and, thus, even according to the appellant only a sum of Rs.64,769/- was incurred by the petitioner-claimant towards 'medical expenses'. So far as 'transportation charges' an amount of Rs.42,000/- and 'attendant charges' at Rs.17,000/- claimed by the petitioner-claimant was discarded on the ground that none were examined therefor.

11. Keeping in view, the nature of injuries and consequential pain, suffering and inconvenience the Tribunal awarded a lump sum amount of Rs.1,00,000/- with interest at 9% p.a. against the 1st respondent alone from the date of petition till realization, and dismissed the claim against the respondents 2 and 3.

12. The only point that arises for consideration is, whether the petitioner-appellant is entitled to enhancement of compensation in the present Appeal?

13. The finding recorded by the Tribunal, in disbelieving the evidence of P.W.2 and ignoring Ex.A4–Disability Certificate, is well

reasoned basing on appreciation of evidence, and hence, does not warrant interference. The question is why the petitioner-claimant did not examine the Doctor, who treated him. He could have taken summons or could have got appointed the commission for examination of Doctor, who treated him, for which the petitioner did not do and no reasons are assigned therefor, in such an event the finding recorded by the Tribunal cannot be faulted.

14. Now, turning to the question, whether the amount of Rs.1,00,000/- awarded by the Tribunal is just and adequate is concerned, certainly, it is to be said that the Tribunal did not award any amount under different heads falling under 'special damages', and 'general damages'. A lump sum amount of Rs.1,00,000/- was awarded without resorting to any of the heads.

15. Even according to the Tribunal a sum of Rs.64,769/- was spent by the petitioner towards 'medical expenses' as borne out by the bills. It is no doubt true to prove the contents of the bills therein as they were issued by Apollo Pharmacy and Sri Venkateswara Pharmacy, Tirupati, which, unless doubted, cannot be rejected. On examination of the medical bills as per Exs.A5 and A12, it is found that the petitioner-claimant incurred an amount of Rs.76,334-00 towards 'medical expenses' and hence the same is awarded as against the amount of Rs.64,769/- arrived at by the Tribunal. Towards 'transportation charges, since the petitioner sustained fracture of vertebral body C.3 with decreased disc space C.3 and C.4, as could be

seen from Ex.A10-Photostat copy of Case summary sheet, certainly, there must have been some inconvenience in his mobility, and, therefore, as against Rs.42,000/- sought towards 'transportation charges' an amount of Rs.20,000/- is granted in the absence of proof of Ex.A6-Transport Bills, numbering 16, covered by Ex.A6. Towards 'attendant charges' a sum of Rs.17,000/- was claimed, no doubt, a sum of Rs.9,000/- is awarded keeping in view that at least Rs.1,500/- p.m. would have paid to look after him for a period of six months i.e., Rs.1,500 x 6 months.

16. The fracture as to C.3, and, according to the learned counsel for the petitioner-claimant, the petitioner has undergone five surgical interventions. It is not forth coming whether he was bedridden and unable to move out of the bed at all. The very fact that he has tendered evidence before the Court would indicate that he has attained normalcy and even internal injuries were cured at the time of examination of P.W.1 by P.W.2, and that was the evidence given by P.W.2. Therefore, keeping in view the surgical interventions for the injuries as well as pain and suffering a sum of Rs.1,00,000/- is awarded. This apart, towards 'extra nourishment' a sum of Rs.15,000/- is awarded. Since at least for a period of six months he was unable to pursue his profession, therefore, towards 'loss of earnings' a sum of Rs.30,000/- is awarded taking the minimum income at Rs.5,000/- per month. Thus, in all, the petitioner-appellant is entitled to compensation of Rs.2,50,334/-.

17. In the result, the Appeal is partly allowed enhancing the compensation from Rs.1,00,000/- (Rupees One lakh only) to Rs.2,50,334-00 (Rupees Two lakhs fifty thousand three hundred and thirty four only). The rate of interest awarded at 9% p.a. on Rs.1,00,000/- is maintained and on the enhanced amount of Rs.1,50,334/- interest at the rate of 7.5% per annum is awarded keeping in view of decision in **Rajesh v. Rajbir**. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in these Civil Miscellaneous Appeals shall stand closed.

Dt. 20.10.2017
gbs

A. SHANKAR NARAYANA

