

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.1935 OF 2006

JUDGMENT:

1. This Appeal is preferred against the order, dated 09.05.2006, in O.P. No.2101 of 2002 on the file the Chairman, Motor Accidents Claims Tribunal-cum-IV Additional District Judge (Fast Track Court), Nizamabad (for short, 'the Tribunal'), wherein the Tribunal granted a compensation of Rs.42,500/- against the original claim of Rs.2,50,000/-.

2. Appellant herein is the petitioner-injured, 1st respondent herein is the owner and 2nd respondent herein is the insurer of the Scooter bearing No.API-9055 (For short, 'the crime vehicle'), who filed a petition before the Tribunal, under Section 166(1)(a) of the Motor Vehicles Act, 1988 (for short, 'the Act') read with Rule 455 of the A.P. Motor Vehicles Rules, 1989, claiming compensation of Rs.2,50,000/- on account of the injuries sustained by him in a motor vehicle accident occurred on 24.10.2002.

3. The brief facts of the petition are that, on 24.10.2002, at about 10:30 a.m., while the appellant was traveling on his cycle from Phulong to Vinayaknagar side and when he reached near Phulong Bridge, the crime vehicle came in their opposite direction, at a high speed, in a rash and negligent manner; and dashed the appellant. As a result of which, the appellant fell down and sustained fracture to right ischial tuberosity, symphysis pubis, abrasion to right ankle, fracture to hip joint and several other injuries. Immediately, the appellant was shifted to Laxmareddy Hospital, Nizamabad for better treatment; wherein, he incurred an amount of Rs.75,000/- towards medical expenses. By the time of accident, the appellant was aged about 60 years, doing agriculture and milk vending

business and earning an amount of Rs.8,000/- p.m. He filed the petition seeking compensation of Rs.2,50,000/-.

4. Respondent No.1, owner of the crime vehicle, was set *ex parte* before the Tribunal.

5. Respondent No.2, insurer of the crime vehicle, filed counter denying the claim of the appellant and contended that the monthly income of the appellant be put to strict proof and as such there is no negligence on the part of the driver of crime vehicle and contended that the burden is on the appellant to prove the subsistence of valid insurance policy with the 2nd respondent and finally contended that the compensation claimed by the appellant is excessive, exorbitant and prayed for dismissal of the petition.

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-9 and Ex.B-1, granted compensation of Rs.42,500/- with proportionate costs and interest at the rate of 7.5% p.a. from the date of petition till realization making respondents Nos.1 and 2 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 Mrs. K. Sarla Mahender Reddy, learned counsel for the appellant. None entered appearance on behalf of the 2nd respondent-insurance company.

9. The appeal against the respondent No.1 - owner of the crime vehicle, was dismissed for default *vide* order of this Court on 05.07.2016. 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:

"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 suffered grievous injuries and simple injuries in the motor accident. To substantiate the same, he was examined as P.W.1 and got marked Exs.A-1 to A-9. The Tribunal has granted only an amount of Rs.42,500/- on all heads and hence, prayed to enhance the compensation.

11. In view of the submissions put forth by the learned counsel for the appellant, and the material available on record, the sole point came up for determination is:

Whether the appellant is entitled for enhancement of compensation?

¹ 2001(1) ALT 495 (D.B.)

12. **POINT**: The evidence on record of P.Ws.1 and 2 reveals that the appellant suffered the following injuries:

1. Fracture of right femur – Grade-III;
2. Superficial abrasion right knee 2" x 1"; and
3. Abrasion right ankle 1" x 1".

13. There is also evidence to believe that the appellant is 60 years old at the time of accident. The evidence of P.W.2, doctor, also reveals that the appellant suffered the above injuries; 1st injury is grievous and other two injuries are simple in nature; due to those injuries, hip movement of the appellant is restricted and he has to suffer pain while sitting and has an obstruction in attending labour work. Ex.A-4 bunch of medical bills and Ex.A-9 x-rays are obtained on his medical advice. Ex.A-3 is the attested copy of wound certificate. P.W.2 also spoke about the genuineness of Ex.A-3. There is no reason to disbelieve that the appellant did not suffer the injuries, as deposed by P.Ws.1 and 2. As seen from the medical bills, the appellant has incurred an amount of Rs.15,985-70 p.s. Taking this into consideration, the Tribunal has rightly granted Rs.16,000/- towards medical expenses, the same needs no interference and is retained. The Tribunal has granted Rs.2,000/- for two simple injuries and Rs.5,000/- for one grievous injury which are very meager and as such the appellant can be granted an amount of Rs.20,000/- for grievous injury and pain and suffering and Rs.10,000/- for two simple injuries. The Tribunal has rightly granted Rs.2,000/- towards transportation and extra nourishment and Rs.7,500/- towards loss of earnings, which are retained by this Court.

14. Though the learned counsel for the appellant submits that there is disability but there is no evidence on record to prove the disability and as such no amount is required to be awarded on this score. As seen from

the evidence on record, the crime vehicle is validly insured with the 2nd respondent and there are no violations in the terms and conditions of Ex.B-1 insurance policy, so the respondents 1 and 2 are jointly and severally liable to pay the compensation.

15. 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.	Medical expenses	Rs.16,000/-	Rs.16,000/-
02.	Pain and suffering, grievous and simple injuries	Rs.17,000/-	Rs.30,000/-
03.	Transportation and extra Nourishment	Rs.2,000/-	Rs.2,000/-
04.	Loss of earnings	Rs.7,500/-	Rs.7,500/-
TOTAL		Rs.42,500/-	Rs.55,500/-

16. Accordingly, the Appeal is allowed in part, enhancing the compensation awarded by the Tribunal from Rs.42,500/- to Rs.55,500/-, keeping intact the rate of interest of 7.5% p.a. awarded and other conditions imposed by the Tribunal as it is. 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.

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

Dr. SHAMEEM AKTHER, J

Date: 17.02.2017.
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HON'BLE Dr. JUSTICE SHAMEEM AKTHER

267



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M.A.C.M.A. No. 1935 OF 2006

Date. 17.02.2017

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