

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No. 440 OF 2006

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), by the appellant-petitioner in O.P. No.702 of 2000 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-VI Additional District Judge (Fast Track Court), Anantapur at Gooty (for short, 'the Tribunal'), having got dissatisfied with the award of compensation of Rs.35,000/- with interest at 7.5% per annum from the date of petition till realisation, vide the order dated 28.10.2005, as against the claim of Rs.1,00,000/-, for the injuries sustained by him in a road accident occurred on 23.07.1999.

2. The case of the appellant-petitioner would show that on 23.07.1999 at about 1-30 a.m., he along with his friend-Lakshminarayana Setty, was proceeding from Anantapur to Pamidi by jeep bearing registration No.AAE 8451 and when they reached Thimmampeta village on national highway No.7, a lorry bearing registration No.AP 21T 0752, driven by its driver in a rash and negligent manner at high speed, came in opposite direction and hit the jeep, due to which, he received grievous injuries and immediately he was shifted to Government Hospital, Pamidi and from there to Government Hospital, Anantapur for better treatment. A case was registered in Crime No.68 of 1999 by Garladinne Police Station for the offences punishable under Sections 337 and 338 I.P.C. against the driver of the lorry. The petitioner stated that due to the accident, he became permanently disabled and unable to attend his regular duties. Hence, he claimed Rs.1,00,000/- as compensation from respondent Nos.1 and 2, who are the owner and insurer of the lorry.

3. Respondent Nos.1 and 2-owner and insurer of the offending lorry filed separate counters before the Tribunal denying the allegations mentioned in the petition and contended that the petitioner received only simple injuries and that the accident occurred due to rash and negligent driving of the driver of the jeep only and therefore, they are not liable to pay any compensation to the appellant-petitioner.

4. The Tribunal, after framing three issues and considering the evidence of P.Ws.1 and 2 and Exs.A.1 to A.7, awarded compensation of Rs.35,000/- with interest at 7.5% per annum from the date of petition till realisation, in favour of the appellant-petitioner against respondent Nos.1 and 2, permitting the appellant-petitioner to withdraw the entire amount. Challenging the said award, the appellant-petitioner preferred the present appeal seeking enhancement of compensation.

5. Heard both the learned counsel for the appellant-petitioner and the learned Standing Counsel for respondent No.2-insurer, apart from perusing the material available on record. The appeal against respondent No.1-owner is dismissed on 14.07.2016 for default. However, dismissal of the appeal for default against 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

¹ 2001(1) ALT 495 (D.B.)

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. The contention of the learned counsel for the appellant-petitioner is that the Tribunal, without considering the evidence on record, granted meagre amount towards compensation though the petitioner suffered permanent disability, and therefore, prayed to enhance the compensation.

7. On the other hand, learned Standing Counsel for respondent No.2-insurer contended that the Tribunal has rightly granted just and adequate compensation to the appellant-petitioner; there are no mitigating circumstances to enhance the compensation; and finally, prayed to dismiss the appeal.

8. Perused the order under appeal and the evidence on record. The manner in which the accident had taken place is not in dispute. The liability fastened by the Tribunal on both the respondents is also not in dispute. Now, the only short question is, whether the appellant-petitioner is entitled for enhancement of compensation?

9. The evidence of P.W.2-doctor shows that the appellant suffered (i) one lacerated injury of 12 cm x 1/2 cm x bone deep on the left frontal region of scaly, (ii) one lacerated injury of 2 cm x 1/2 cm x bone deep on the left eyebrow, and (iii) tenderness on right pelvic region. Ex.A.2-photostat copy of wound certificate also reveals the same. P.W.2-doctor had also deposed

about the disability suffered by the appellant at 35%. Ex.A.5-physically handicapped certificate of the appellant shows the said disability, but there is no mention that the said disability is permanent or not. Coming to the quantum of compensation granted by the Tribunal under various heads, it appears to be low. Therefore, it requires enhancement. The amount of Rs.4,000/- granted by the Tribunal towards two simple injuries is enhanced to Rs.12,000/-; the amount of Rs.28,000/- granted by the Tribunal towards disability is maintained, as the same is just and reasonable; and the amount of Rs.3,000/- granted by the Tribunal towards medical expenses is also maintained. The Tribunal has not granted any amount towards extra nourishment, attendant and transport charges. On this score, an amount of Rs.5,000/- is granted. In all, the petitioner is entitled to Rs.48,000/- as against Rs.35,000/- granted by the Tribunal.

10. So far as the rate of interest is concerned, the Tribunal granted interest at the rate of 7.5% per annum from the date of petition till realization and the same is maintained on the entire amount of compensation as per the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**².

11. Accordingly, this appeal is partly allowed modifying the impugned order dated 28.10.2005 passed by the Tribunal, enhancing the compensation from Rs.35,000/- to Rs.48,000/- with interest at the rate of 7.5% per annum from the date of petition till realisation. The appellant-petitioner is permitted to withdraw the entire amount of compensation. The other terms of the order under challenge remain unchanged.

² 2013 ACJ 1403

12. Miscellaneous Petitions pending, if any, shall stand closed. No order as to costs.

Dr. SHAMEEM AKTHER, J

Date: 10.03.2017

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