

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No. 2526 of 2005

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), by the appellant-petitioner in M.V.O.P. No.411 of 1999 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Srikakulam (for short, 'the Tribunal'), having got dissatisfied with the award of compensation of Rs.38,887/- with interest at 6% per annum from the date of petition till realisation, vide the order dated 01.02.2005, as against the claim of Rs.5,00,000/-, for the injuries sustained by the appellant-petitioner in a road accident, which occurred on 16.02.1999.

2. The case of the appellant-petitioner is that he is the resident of Sarthidi village, Kanchili Mandal of Srikakulam District. On 16.02.1999 at about 09:30 PM, when the petitioner was crossing the road at B.C. Colony near Peddapalem Village, a lorry bearing No.AP 02 T 6263, being driven by its driver in a rash and negligent manner, dashed against him. The front wheels of the crime vehicle ran over the left wrist of the appellant-petitioner and the appellant-petitioner sustained simple and grievous injuries all over his body. Contending that due to the accident, he took prolonged treatment in a hospital as in-patient for 72 days and incurred huge amount towards medical expenditure and that his earning capacity is badly affected, he filed a claim petition before the Tribunal claimaing a total compensation of Rs.5,00,000/-.

3. The Tribunal, after framing three issues and considering the evidence of P.W.1 and Exs.A.1 to A.9 and Ex.B.1, awarded

compensation of Rs.38,887/- with interest at 6% per annum from the date of petition till realisation, in favour of the appellant-petitioner against respondents Nos.1 to 3. Challenging the said Award, the appellant-petitioner preferred the present Appeal seeking enhancement of compensation.

4. Heard both the learned counsel for the appellant-petitioner and the learned Standing Counsel for respondent No.3-insurer and perused the material available on record. The appeal against respondent No.2-owner of the crime vehicle was dismissed on 05.01.2012 for default. However, dismissal of the appeal for default against respondent No.2-owner of the crime 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 others¹, wherein, it was 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."

¹ 2001(1) ALT 495 (D.B.)

5. The contention of the learned counsel for the appellant-petitioner is that the petitioner was aged 28 years, working as a coolie and earning a monthly income of Rs.2,500/-. The Tribunal erred in awarding a meagre compensation of Rs.5,000/- towards fracture of left hand, whereas, the petitioner incurred an amount of Rs.32,886/- towards medical expenditure. The Tribunal ought to have taken into consideration Ex.A.3 – Disability Certificate and granted higher compensation. The Tribunal ought to have awarded interest at the rate of 12% instead of 6%. The amounts granted by the Tribunal on various counts are very meagre amounts; and therefore, prayed to enhance the compensation as prayed for.

6. On the other hand, learned Standing Counsel for respondent No.3-insurer contended that the Tribunal has taken all the factors into consideration and granted adequate, just and reasonable compensation. There are no mitigating circumstances to enhance the compensation; and finally, prayed to dismiss the appeal.

7. Perused the order and the evidence on record. It is evident from the record that the petitioner suffered fracture to the left hand and also simple injury to his left temporal region. As per the medical record produced before this Court, the petitioner incurred medical expenses of Rs.32,887/- and the Tribunal granted the total medical expenses covered under Ex.A.8. The Tribunal granted Rs.5,000/- towards one grievous injury and Rs.1,000/- towards one simple injury, i.e., Rs.6,000/- in all for the injuries sustained by the petitioner. Considering the nature of the injuries sustained by the petitioners, this

Court deems it appropriate to award Rs.10,000/- for one grievous, one simple injury sustained by the petitioner, including pain and suffering. The medical expenses granted by the Tribunal are supported by the evidence on record and there is no need to vary the same. As far as loss of earnings is concerned, the Tribunal did not grant any amount under this head. It is evident from the ocular and the documentary evidence that the petitioner did not work for three months. Considering the nature of occupation of the petitioner, this Court deems it just and appropriate to take his monthly income at Rs.3,000/- per month. Thus, the total loss of earnings of the petitioner would come to Rs.9,000/- (Rs.3,000/- X 3 months).

8. Accordingly, the appellant-petitioner is entitled for a total compensation of Rs.51,887/- (Rupees Fifty one thousand eight hundred and eight seven only) {Rs.10,000/- + Rs.32,887/- + Rs.9,000}. There is ample evidence to believe that the crime vehicle is insured with the 3rd respondent herein-insurance company and it was in force as on the date of accident. The Tribunal rightly directed the respondents 1 to 3 to pay the compensation jointly and severally to the appellant-petitioner.

9. So far as the rate of interest is concerned, the Tribunal granted interest at the rate of 6% per annum from the date of petition till realization. However, as per the decision of the Hon'ble Supreme Court in Rajesh and others v. Rajbir Singh and others², the

² 2013 ACJ 1403

petitioner is entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of petition till realisation.

10. Accordingly, this appeal is allowed in part modifying the impugned order dated 01.02.2005 passed by the Tribunal, enhancing the compensation from Rs.38,887/- to Rs.51,887/- with interest at the rate of 7.5% per annum on the enhanced amount only from the date of petition till realisation. On deposit of the compensation, the appellant-petitioner is permitted to withdraw the entire amount and interest. The other terms of the Order under challenge remain unaltered.

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

24th October, 2017
Bvv

Dr. Shameem Akther, J

