

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No. 2496 OF 2005

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), by the appellants, who are the petitioners in M.V.O.P. No.1250 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Kadapa (for short, 'the Tribunal'), having got dissatisfied with the award of compensation of Rs.86,048/- with interest at the rate of 9% per annum from the date of petition till realisation, granted by the Tribunal, *vide* the order dated 14.12.2004, as against the claim of Rs.4,50,000/- laid under Section 166 of the Act for the injuries sustained by appellant No.1 in a motor accident occurred on 22.06.1997.

2. Heard both the learned counsel for the appellants-petitioners and the learned Standing Counsel for respondent No.1-insurer, apart from perusing the material available on record. The appeal against respondent No.2-owner of the crime vehicle is dismissed on 06.01.2012 for default. However, dismissal of the appeal for default against respondent No.2-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.

3. Learned counsel for the appellants-petitioners would submit that appellant No.1 died during the pendency of the O.P. before the Tribunal; appellant Nos.2 to 4 are added as legal representatives of appellant No.1; appellant No.1 filed claim petition claiming compensation of Rs.4,50,000/-, but the Tribunal has granted only Rs.86,048/- without taking into consideration the grievous injuries suffered in the motor accident; appellant No.1 died on 15.03.2004 due to the injuries suffered by him in the motor accident; there is

¹ 2001(1) ALT 495 (D.B.)

evidence of P.W.2-doctor that the death resulted due to the injuries; the Tribunal had not taken medical bills and all other factors into consideration to determine compensation payable; and ultimately, prayed to enhance the compensation.

4. On the other hand, learned Standing Counsel appearing on behalf of respondent No.1-insurer would submit that the death of appellant No.1 occurred seven years after the occurrence of the accident; there is no post-mortem examination report to believe that the death resulted due to the injuries suffered in the motor accident and there is no iota of evidence to believe that appellant No.1 succumbed to injuries suffered by him in the motor accident; the Tribunal had analysed the entire evidence on record and rightly determined the compensation payable to the appellants; there are no circumstances warranting interference of the award of the Tribunal; and ultimately, prayed to dismiss the appeal.

5. In view of the contentions putforth by both sides, the short point for consideration is, whether the appellants are entitled for enhancement of compensation?

6. As seen from the record, the accident occurred on 22.06.1997 and appellant No.1 died on 15.03.2004. On the date of filing of the claim petition, the age of appellant No.1 was shown as 68 years. It goes to show that on the date of death, appellant No.1 was 75 years old. In view of the contentions putforth, the appellants have to prove that the death in question arose due to the injuries suffered in the motor accident. No single document is filed to substantiate the same. Learned counsel for the appellants is relying on the evidence of P.W.2, who stated in his evidence that due to the injuries, opined there was shortening of limb. Admittedly, P.W.2 had no opportunity to examine appellant No.1 at any point of time after discharge from his hospital. Therefore, the evidence of P.W.2 is of no use to the appellants. As seen from the entire evidence on record both oral and documentary evidence, though X-ray reports of the injured-appellant

No.1 were not filed before the Tribunal, however relying on the evidence of P.W.2, the wound certificate marked as Ex.A.3 and discharge summary of the hospital marked as Ex.A.8, the Tribunal held that appellant No.1 suffered grievous and simple injuries and determined compensation. The Tribunal has also held that appellant No.1 was no more on the date of the impugned order and taking into consideration all the relevant factors, granted compensation of Rs.86,048/- with interest at 9% per annum. This finding is based on record. There are no circumstances to take a different view. All contentions raised on behalf of the appellants do fail. The appeal is devoid of merit and is liable to be dismissed.

7. In the result, this appeal is dismissed confirming the order and decree dated 14.12.2004 passed by the Tribunal in M.V.O.P. No.1250 of 2001. There shall be no order as to costs.

8. Miscellaneous Petitions pending, if any, shall stand closed.

Date: 11.10.2017

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Dr. SHAMEEM AKTHER, J

