

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.3322 OF 2005

JUDGMENT:

1. This Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), is filed by the appellant, who is the petitioner in O.P. No.73 of 2004 filed under Section 166(1)(a) of the Act on the file of the Chairman, Motor Vehicle Accident Claims Tribunal-cum-II Additional District Judge, Karimnagar at Jagtial (for short, 'the Tribunal'), aggrieved by the award dated 21.06.2005, whereby the Tribunal granted a compensation of Rs.1,70,000/-, against the original claim of Rs.3,00,000/-, for the injuries sustained by Mohammad Hymad, who was the minor son of the petitioner, in a motor accident occurred on 04.01.2002, and directed that both the respondents are jointly and severally liable to pay the same with interest at the rate of 9% p.a. from the date of petition till the date of realisation.

2. Appellant herein is the petitioner; 1st respondent herein is the driver-cum-owner and 2nd respondent herein is the insurer of Jeep bearing registration No.ADF 1661 (for short, 'the crime vehicle').

3. Heard the learned counsel for the appellant-petitioner and perused the record. The Appeal against the 1st respondent-owner of the crime vehicle was dismissed for default *vide* order of this Court on 06.01.2012. In spite of service of notice on behalf of the 2nd respondent-insurer, none entered appearance and there is no representation on its behalf till date. Absence of owner of crime

vehicle is of no consequence to decide the quantum of compensation in this appeal, in view of a Division Bench decision 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."

4. Learned counsel for the appellant-petitioner would submit that due to the accidental injuries, the injured suffered amputation of left hand below his elbow, for which the Tribunal awarded an amount of Rs.96,000/- towards loss of earnings, Rs.40,000/- towards pain and suffering, Rs.30,000/- towards loss of future amenities and Rs.4,000/- towards servant charges, transport and extra nourishment; in all granted a compensation of Rs.1,70,000/-, which is meagre when compared to the tender age of the injured and ultimately prayed to enhance the compensation.

¹ 2001(1) ALT 495 (D.B.)

5. On hearing the arguments of learned counsel for the appellant-petitioner and perusing the material available on record, the point that arises for determination is whether the appellant-petitioner is entitled for enhancement of compensation?

6. **POINT:** The injured to substantiate his case examined himself as P.W.1 and also examined Dr.K.N.Venkatrathnam, Civil Assistant Surgeon at Government Hospital, Jagtial, as P.W.2 and marked Exs.A-1 to A-5. Ex.A-1 is the certified copy of F.I.R, Ex.A-2 is the certified copy of charge sheet, Ex.A-3 is the certified copy of Form No.54, Ex.A-4 is the certified copy of wound certificate issued by Government Hospital, Jagtial, and Ex.A-5 is the discharge card. On behalf of the respondents none were examined but marked Ex.B-1 – copy of insurance policy. P.W.1 in his evidence deposed about the rashness and negligence on the part of the driver of crime vehicle, amputation to his left hand, treatment taken by him and the expenses incurred for undergoing his treatment. There is also evidence of P.W.2, doctor, who clearly and categorically stated that on 04.01.2002, the injured was admitted in the hospital with injuries on his body, suffered in a road accident, and underwent traumatic amputation of his left fore-arm and was in hospital for 15 days. Ex.A-5 is the discharge card, which reveals the amputation to the left hand of the injured, corroborates with the evidence of P.Ws.1 and 2. The evidence of P.W.2, doctor, who is an Orthopedic Surgeon, further reveals that he assessed the disability suffered by the injured at 55%, however, admittedly the District Medical Board at Karimnagar is the competent authority to assess the exact disability

suffered by the injured. There is ample criminal case record as well as oral and documentary evidence to believe that the injured suffered injuries and amputation to his left hand in the accident due to the rash and negligent driving of the driver of crime vehicle. This finding of the Tribunal is based on evidence and record; there is nothing to take a different view. There is also record to believe that the crime vehicle is validly insured with the 2nd respondent-insurer under the original of Ex.B-1 as on the date of accident and there was no violation of terms and conditions of insurance policy by the 1st respondent, the Tribunal rightly directed both the respondents jointly and severally to pay the compensation of Rs.1,70,000/- with interest.

7. As far as the award of compensation is concerned, the accident occurred on 04.01.2002; the Tribunal took the monthly earnings of the minor injured in those days as Rs.1,000/-, as he suffered 50% disability deducted 50% from Rs.1,000/- and took the loss of earnings as Rs.500/- p.m. and Rs.6,000/- p.a. relying on the II Schedule of the Act, adopted the multiplier '16' for the age group between 15 to 20 and arrived at Rs.96,000/- (Rs.500/- x 12 x 16) towards loss of earnings. In view of the decision of the Apex Court in ***Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another***², relevant multiplier applicable to the age group of the injured i.e., 17 years is 18 and his annual income can be taken as Rs.25,000/- and deducting Rs.12,500/- i.e., 50% towards his personal expenses, the remaining Rs.12,500/- is multiplied with 18, the amount of compensation to be awarded under the head of loss

² 2009 (6) SCC 121

of earnings and disability would come to Rs.2,25,000/-. The Tribunal has also awarded an amount of Rs.40,000/- towards pain and suffering, Rs.30,000/- towards loss of future amenities and Rs.4,000/- towards attendant charges, transportation and extra nourishment; these findings are based on evidence and record and requires no interference.

8. The following is the tabular form showing the amount of compensation awarded by the Tribunal and modified by this Court under each head:

Sl.No.	Name of Head	Awarded by Tribunal	Modified by this Court
01.	Loss of earnings	Rs.96,000/-	Rs.2,25,000/-
02.	Pain and suffering	Rs.40,000/-	Rs.40,000/-
03.	Loss of future amenities	Rs.30,000/-	Rs.30,000/-
04.	Attendant charges, transportation & extra nourishment	Rs.4,000/-	Rs.4,000/-
TOTAL		Rs.1,70,000/-	Rs.2,99,000/-

9. In the result, the Appeal is allowed in part enhancing the compensation awarded by the Tribunal from Rs.1,70,000/- to Rs.2,99,000/-. The rate of interest awarded by the Tribunal at the rate of 9% p.a. is on higher side and in view of decision of the Apex Court in ***Rajesh and others Vs. Rajbir Singh and others***³, the appellant-petitioner is entitled to interest at the rate of 7.5% p.a. from the date of filing of petition till the date of realization, on the entire compensation. Accordingly, both the respondents are directed to deposit the compensation amount within 1 month from today. On such deposit, the appellant-petitioner is permitted to withdraw the

³ 2013 ACJ 1403

entire amount. The other conditions imposed by the Tribunal remain unchanged.

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

Dr. SHAMEEM AKTHER, J

Date: 24.10.2017.
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HON'BLE Dr. JUSTICE SHAMEEM AKTHER

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M.A.C.M.A. No.3322 OF 2005

Date. 24.10.2017

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