

HON'BLE Dr.JUSTICE SHAMEEM AKTHER

MACMA No.883 of 2007

JUDGMENT:

Heard learned counsel for the appellant/claimant. The claim against respondent No.1 – owner of the vehicle has been dismissed for default vide order dated 08.07.2016. The dismissal of claim against owner of the vehicle is not a bar to adjudicate this appeal on merits in view of the decision in **Meka Chakra Rao v. Yelubandi Rama Rao**¹. Hence, this appeal is being disposed of by this judgment.

2. Learned counsel for the appellant/claimant would submit that though the appellant had suffered three grievous injuries and one simple injury, the Tribunal has granted only Rs.34,000/- towards the injuries suffered by the appellant and Rs.4,000/- on other scores and ultimately granted compensation of Rs.38,000/- to the appellant, which is very meager. The Tribunal ought to have granted compensation on other scores also, i.e. for extra nourishment, transportation charges etc. The Tribunal has taken the daily earnings of the appellant as Rs.50/- and held that he is entitled for Rs.1,000/- as he was unable to do any work for a period of 20 days, which is erroneous. Though the appellant is entitled to get compensation of Rs. 1 lakh, the Tribunal has granted only Rs.38,000/- and prayed to allow the appeal as prayed for.

3. Learned counsel appearing on behalf of the respondent No.2/insurer would submit that the Tribunal has granted compensation in favour of the appellant on all scores; the amount awarded is reasonable and adequate; the

¹ 2001 (1) ALD 453

Tribunal has taken all the factors into consideration and there is nothing to vary from the award and decree under appeal and ultimately prayed to dismiss the appeal.

4. In view of the facts and circumstances and the contentions put forth, the point for determination is whether the appellant is entitled for enhancement of compensation. The evidence of P.W.1 and the document marked as Ex.A.2, wound certificate, reveal that the appellant has suffered fracture in his right knee joint, right first and second meta tarsals, right side ribs and also dislocation of his right leg. Altogether, he suffered 3 grievous injuries and one simple injury. The appellant did not examine any Doctor on his behalf to substantiate his claim. However, there is specific mention of the injuries suffered by the appellant in Ex.A.2, wound certificate coupled with the evidence of P.W.1. Therefore, appellant suffering three grievous injuries and one simple injury as indicated above cannot be disbelieved. Taking the same into consideration, the Tribunal has granted compensation of Rs.34,000/- on that score. It appears meagre. In view of the nature of injuries, the said amount can be enhanced to Rs.50,000/-. The Tribunal has granted Rs.1,000/- towards loss of earnings and Rs.3,000/- towards medical expenses. Admittedly, the appellant was 37 years old and working as labourer. Therefore, his monthly income can be taken as Rs.3,000/-. The Tribunal has granted Rs.1,000/- for the loss of earnings for a period of 20 days. But, in view of the injuries suffered by the appellant, it can be safely conclude the appellant could not have worked for about three months. So, loss of earnings can be determined as Rs.9,000/- instead of Rs.1,000/- as awarded by the Tribunal. Rs.3,000/- towards medical expenses can be

retained. The Tribunal has not granted any amount towards extra nourishment. Looking at the injuries suffered by him and the period of his suffering, it can be assessed at Rs.5,000/-. So, in all, the appellant is entitled for Rs.67,000/-. As far as rash and negligent driving of the crime vehicle is concerned, there is oral and documentary evidence to substantiate the same and the Tribunal has rightly tagged the liability against the respondents. Therefore, no interference is warranted thereon.

5. In the result, the appeal is allowed in part, enhancing the compensation awarded by the Tribunal from Rs.38,000/- to Rs.67,000/- (Rupees Sixty Seven Thousand only) with interest at 7.5% per annum from the date of the claim petition till the date of deposit and costs. The appellant is entitled to withdraw the enhanced compensation. Other directions of the Tribunal are retained.

Miscellaneous applications, if any, pending in this appeal shall stand closed.

June 16, 2017
MRR

Dr.SHAMEEM AKTHER, J