

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.384 OF 2007

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.213 of 2005 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-X Additional Chief Judge (Fast Track Court), City Civil Court at Hyderabad (for short, 'the Tribunal'), having got dissatisfied with awarding compensation of Rs.56,000/-, against the original claim of Rs.1,20,000/-, in directing both the respondents jointly and severally liable to pay the same with interest at 7.5% *per annum* from the date of petition till realisation, *vide* order of the Tribunal dated 12.09.2006, for the injuries sustained by him in a motor accident occurred on 05.10.2004.

2. Heard the arguments of learned counsel for the appellant-petitioner and the learned Standing Counsel for the 2nd respondent-insurer and perused the record.

3. Appellant herein is the petitioner-injured, 1st respondent herein is the owner of Hero Honda motorcycle bearing registration No.AP-10H-4990 (for short, 'the crime vehicle') and the 2nd respondent herein is its insurer.

4. The parties hereinafter are referred to as arrayed before the Tribunal.

5. The case of the petitioner, in brief, is that on 05.10.2004 at about 10-30 p.m., when the petitioner, as pillion rider, along with his brother-in-law, was travelling by the Luna bearing registration No.AP-28J-5351 from Hyderabad towards L.B. Nagar, and when the Luna reached near Petrol Pump at Vanasthalipuram, Vijayawada Highway, the crime vehicle came

in their opposite direction, at high speed, in a rash and negligent manner and dashed the Luna; as a result of which, the petitioner and the inmate of the Luna fell down and sustained grievous injuries besides fractures. Immediately, they were shifted to Osmania General Hospital, Hyderabad. Subsequently, S.R. Nagar P.S. registered a case in Crime No.588 of 2004 against the concerned. The petitioner, besides suffering pain and mental agony, also incurred an amount of Rs.10,000/- towards medical expenses and as such his future prospects are badly affected. Hence, claimed compensation of Rs.1,20,000/- against both the respondents, who are owner and insurer of the crime vehicle.

6. Respondent No.1-owner of the crime vehicle remained *ex parte*.

7. Respondent No.2-insurer of the crime vehicle filed counter denying the material allegations of the petition *inter-alia* contending that the age, income, manner of accident, treatment taken at various hospitals and medical expenses incurred by the petitioner be put to strict proof of the same. It was further contended that the driver of crime vehicle has no valid and effective driving license and as such the crime vehicle was not insured with the 2nd respondent. It was further contended that the person who drove the Luna, has no valid driving license and drove it in a rash and negligent manner; moreover, the Luna is not roadworthy to ply and, finally, contended that the compensation claimed is highly excessive, exorbitant and sought for dismissal of the Petition.

8. The Tribunal, after framing issues and, considering the evidence of P.Ws.1 and 2 and the documents Exs.A.1 to A.5, Ex.X-1 and Ex.B-1, awarded compensation of Rs.56,000/- (*i.e.*, Rs.25,000/- towards fracture injuries, Rs.5,000/- towards pain and suffering, Rs.2,500/- towards loss of income, Rs.16,500/- towards disability, Rs.5,000/- towards medical

expenses, Rs.1,000/- towards extra nourishment and Rs.1,000/- towards transportation) with interest at the rate of 7.5% per annum from the date of petition till realisation, making both the respondents jointly and severally liable to pay the compensation.

9. The appeal against the 1st respondent-owner of the crime vehicle was dismissed for default on 05.07.2016. However, absence of 1st respondent-owner of the 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 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."

10. Learned counsel for the appellant-petitioner submits that though the petitioner suffered 10% to 15% disability, the Tribunal has granted only Rs.16,500/- towards disability. Though the petitioner was working as Hamali, as on the date of accident, and earning Rs.3,500/- p.m. the Tribunal has only granted Rs.2,500/- towards loss of earnings. The Tribunal has also granted a compensation of Rs.1,000/- towards extra

¹ 2001 (1) ALT 495 (D.B.) (AP)

nourishment which is on lower side. In all, the Tribunal has granted a compensation of Rs.56,000/- against the original claim of Rs.1,20,000/- and ultimately prayed to enhance the compensation, as prayed for.

11. On the other hand, learned standing counsel for the 2nd respondent-insurer, contended that the Tribunal has granted compensation on all heads; there is no certificate from the competent medical board to believe the disability of the petitioner and grant compensation on that score. An amount of Rs.2,500/- was granted towards loss of earnings, which is quite reasonable, so also the amount granted under the head of extra nourishment and as such there are no mitigating circumstances to interfere with the order under appeal and ultimately prayed to dismiss the Appeal.

12. As seen from the entire evidence on record, there is nothing to disbelieve that the petitioner did not suffer grievous injuries due to rash and negligent driving of the crime vehicle; the Tribunal has analyzed the entire evidence on record and decided the issue; this finding cannot be disturbed. Further, the Tribunal relying on Ex.A-1, certified copy of F.I.R., held that the crime vehicle is validly insured with the 2nd respondent-insurer and there are no violations of terms and conditions of Ex.B-1, insurance policy, tagged the liability against both the respondents; this finding is also based on record and there is nothing to interfere with the same.

13. Now, the point for determination is whether the appellant-petitioner is entitled for enhancement of compensation, as prayed for?

14. **POINT:** There is specific evidence of P.W.2, doctor, that the petitioner suffered three injuries *i.e.*, 1) 5 C.M. size lacerated wound on middle 1/3rd of left leg anterior aspect, 2) lacerated wound on middle

aspect of the left leg size 5 C.M. over lower 1/3rd of left leg and 3) there is deformity crypt abnormal mobility present over middle 1/3rd of left leg. This evidence establishes that due to those injuries, the normal life of the petitioner is affected; there is also record to believe that the petitioner was working as Hamali and earning Rs.3,500/- p.m. Ex.A-3 is the certified copy of MLC report and Ex.A-4 is the discharge card issued by the Osmania General Hospital, Hyderabad. There is nothing to disbelieve the version of P.W.2, doctor, who specifically stated that the petitioner suffered disability between 10 to 15%. It is appropriate to state that the Medical Board constituted by the experts is the competent authority to certify the percentage of disability, but there is no such examination and report in this case. However, the evidence of P.W.2, doctor, cannot be brushed aside and it can be held that the petitioner suffered some disability and his normal life is affected. Taking these factors into consideration, instead of Rs.16,500/- granted by the Tribunal towards disability, an amount of Rs.30,000/- is awarded towards disability and effect caused to the normal life of the petitioner.

15. Learned counsel for the appellant-petitioner has relied on a decision of the Apex Court in ***Ramachandrappa Vs. Manager, Royal Sundaram Allianz Insurance Company Limited***², wherein the Apex Court took the monthly income of the petitioner-injured, who was working as Hamali, aged 35 years, as Rs.4,500/- p.m. However, the capability to earn differs from person to person and place to place; further the age of the petitioner herein is 50 years. Therefore, in the case on hand, the monthly income of the petitioner can be taken as Rs.3,000/-. As such, it can be safely concluded that the appellant-petitioner did not work for six months due to the injuries suffered in the accident, an amount of

² AIR (2011) SC 2951

Rs.18,000/- is awarded towards loss of earnings, instead of Rs.2,500/-.

The Tribunal has granted Rs.1,000/- towards extra nourishment, which appears to be quite low. When a person suffers grievous injuries and was bedridden for six months, he spends more than Rs.1,000/- towards extra nourishment, in addition to his regular expenses. Therefore, an amount of Rs.6,000/- is awarded towards extra nourishment, instead of Rs.1,000/-.

As far as grant of compensation on other scores such as Rs.25,000/- towards fracture injuries, Rs.5,000/- towards pain and suffering, Rs.5,000/- towards medical expenses and Rs.1,000/- towards transportation is concerned, the Tribunal has arrived at a just conclusion, there is nothing to interfere with the said finding.

16. 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, if any
01.	Fracture injuries	Rs.25,000/-	Rs.25,000/-
02.	Pain and suffering	Rs.5,000/-	Rs.5,000/-
03.	Loss of income	Rs.2,500/-	Rs.18,000/-
04.	Disability	Rs.16,500/-	Rs.30,000/-
05.	Medical expenses	Rs.5,000/-	Rs.5,000/-
06.	Extra Nourishment	Rs.1,000/-	Rs.6,000/-
07.	Transportation	Rs.1,000/-	Rs.1,000/-
TOTAL		56,000/-	Rs.90,000/-

17. Accordingly, the Appeal is allowed in part, enhancing the compensation awarded by the Tribunal from Rs.56,000/- to Rs.90,000/-, keeping intact the rate of interest of 7.5% p.a. awarded from the date of filing of petition to the date of deposit of entire compensation. Both the respondents are jointly and severally liable to pay the compensation. On depositing compensation amount, the appellant-petitioner is permitted to

withdraw the entire compensation amount. The other conditions imposed by the Tribunal remain un-changed.

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

Dr. SHAMEEM AKTHER, J

Date: 21.07.2017.
Dsh



HON'BLE Dr. JUSTICE SHAMEEM AKTHER

185



26072017

M.A.C.M.A. No. 384 OF 2007

Date. 21.07.2017

DSH