

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.490 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-injured in O.P. No.1396 of 2003, on the file of the Chairman, Motor Accidents Claims Tribunal-cum-VIII Additional District Judge at Nizamabad (for short, 'the Tribunal'), having got dissatisfied with awarding compensation of Rs.97,839/-, payable by both the respondents, against the original claim of Rs.4,00,000/-, with interest at 7.5% *per annum* from the date of petition till realisation, *vide* order of the Tribunal dated 28.09.2006, for the injuries sustained by him in a motor accident occurred on 03.09.2003.

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 Tata Sumo bearing registration No.AP-25U-1516 (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 03.09.2003 at about 09-30 p.m., when the petitioner, along with others was travelling by the crime vehicle from Varni to Nizamabad, and when the crime vehicle reached near Mallaram Gandhi of Mallaram village, the driver of the vehicle drove it in a rash and negligent manner, at high speed, and dashed against a cyclist and thereafter the vehicle went off the road and turned turtle; as a result of which, the petitioner and other inmates of the vehicle

sustained multiple grievous injuries. The petitioner sustained fracture of right shoulder, clavicle bone and grievous injury on right eye and his right eye was completely removed besides sustaining permanent disability; he also sustained injuries on his head, chest, hands and legs. Immediately after the accident, the petitioner was shifted to Deepa Orthopaedic Nursing Home, Nizamabad and, later, to Vasavi Laser Eye Hospital, Nizamabad, for better treatment; wherein, the right eye of the petitioner was removed and, subsequently, he underwent treatment for his fracture injuries. The petitioner, who was doing kirana business and earning an amount of Rs.10,000/- p.m., incurred an amount of Rs.80,000/- towards medical expenses and also advised to undergo further treatment. Therefore, he claimed compensation of Rs.4,00,000/- from 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 contending that the crime vehicle was plying on hire at the time of accident from Varni to Nizamabad and, as the crime vehicle was registered as a private vehicle, the 1st respondent permitted the petitioner and other inmates of the vehicle by contravening the terms and conditions of the insurance policy. Therefore, the 2nd respondent-insurer is not liable for payment of any compensation and as such the compensation claimed by the petitioner 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 R.W.1 and the documents Exs.A.1 to A.12 and Ex.B-1, awarded the compensation of Rs.97,839/- (*i.e.*, Rs.33,000/- towards injuries, Rs.52,000/- towards 40% disability, Rs.7,839/- towards medical

expenses and Rs.5,000/- towards loss of earnings, extra nourishment and other expenses) 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. However, the 2nd respondent-insurer was further directed to pay the compensation first to the petitioner and thereafter to recover the same from the 1st respondent-owner of the crime vehicle.

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 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 contended that the Tribunal has taken the annual income of the petitioner as Rs.15,000/-, which is quite un-reasonable and granted Rs.52,000/- towards 40%

¹ 2001(1) ALT 495 (D.B.)

disability suffered by the petitioner; on all other scores also, the Tribunal has granted a meager compensation, which is unjust and, ultimately, prayed to enhance the compensation to Rs.4,00,000/-, as claimed in the petition.

11. On the other hand, learned counsel appearing for the 2nd respondent-insurer contended that the Tribunal has granted just and reasonable compensation on all scores taking into account all the injuries and the disability suffered by the petitioner. There are no circumstances to enhance the compensation and, ultimately, prayed to dismiss the Appeal.

12. There is no much contest with regard to rashness and negligence on the part of the driver of crime vehicle and its insurance with the 2nd respondent-insurer.

13. The point falls for consideration is whether the petitioner is entitled for enhancement of compensation, as prayed for?

14. **POINT**: There is evidence of P.Ws.1 and 2, who are the petitioner and the doctor, on record. There is specific evidence of P.W.2, Dr. Dwaraknath, who conducted operation and removed the right eye of the petitioner on 05.09.2003 and discharged him on 06.09.2003, while the accident occurred on 03.09.2003. There is ample evidence on record to establish the removal of right eye of the petitioner due to accidental injury. Further, there is specific evidence of P.W.2 that the petitioner had suffered 40% visual disability. Ex.A-3 is copy of wound certificate of the petitioner, which reveals that the petitioner suffered: 1) fracture of right shoulder clavicle, 2) contusion on right eye, 3) an abrasion on fore-head 4 x 2 C.Ms and 4) a contusion on right knee 4 x 4 C.Ms. Exs.A-1 to A-12 were marked on behalf of the petitioner. Ex.A-1 is the copy of F.I.R, Ex.A-2 is the copy of charge sheet, Ex.A-3 is the copy of wound certificate, Ex.A-4 and A-6

are the prescriptions of doctor, Ex.A-5 is the discharge summary, Ex.A-7 is the receipt, Ex.A-8 are the medical bills 8 in number, Ex.A-9 is the Blindness certificate issued by the District Medical Board, Nizamabad which reveals 40% visual disability, Ex.A-10 is the photo with negative of petitioner, Ex.A-11 is the copy of cover note of insurance policy and Ex.A-12 is the x-ray film. All these documents clinchingly support the case of the petitioner; establish the aforesaid injuries and removal of his right eye, due to accidental injury. The Tribunal also upheld the injuries suffered by the petitioner and awarded the compensation as determined below:

S.No.	Name of the Head	Compensation awarded
1.	Grievous injuries	Rs.30,000/-
2.	Simple injuries	Rs.3,000/-
3.	Medical expenses	Rs.7,839/-
4.	Loss of earnings, extra nourishment and other miscellaneous expenses	Rs.5,000/-
5.	40% disability	Rs.52,000/-
TOTAL		Rs.97,839/-

15. The Tribunal while determining the compensation under the head of 40% disability as Rs.52,000/-, took the age of the petitioner as 50 years, his annual income as Rs.15,000/-, deducted 1/3rd towards his personal expenses and multiplied the same with the relevant multiplier '13' (Rs.10,000 x 13 x 40/100). The evidence of P.W.1 reveals that he is aged 40 years, doing kirana business and earning Rs.10,000/- per month, but did not produce any document to substantiate his earnings. Therefore, the Tribunal has taken his gross annual income as Rs.15,000/-, which appears to be very low and even from that deducted Rs.5,000/- towards his personal expenses, which is also erroneous. In view of the circumstances of the case and the evidence on record, the annual income of the petitioner can be taken as Rs.24,000/- and there is nothing to be deducted towards his personal expenses. In view of the principle laid down by the Apex Court in **Smt. Sarla Verma and others Vs. Delhi**

Transport Corporation and another², the relevant multiplier applicable to the age group of the petitioner *i.e.*, 46 to 50 years is '13'. If the annual income of the petitioner is multiplied with relevant multiplicand (Rs.24,000/- x 13), it would come to Rs.3,12,000/- and 40% out of it comes to Rs.1,24,800/- and the same is rounded off to Rs.1,25,000/-, the same is awarded under the head of 40% disability. The Tribunal has granted adequate compensation on all other scores and there is nothing to interfere with the order of the Tribunal.

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.	Grievous injuries	Rs.30,000/-	Rs.30,000/-
02.	Simple injuries	Rs.3,000/-	Rs.3,000/-
03.	Medical expenses	Rs.7,839/-	Rs.7,839/-
04.	Loss of earnings, extra nourishment and other miscellaneous expenses	Rs.5,000/-	Rs.5,000/-
05.	40% disability	Rs.52,000/-	Rs.1,25,000/-
TOTAL		Rs.97,839/-	Rs.1,70,839/-

17. Accordingly, the Appeal is allowed in part, enhancing the compensation awarded by the Tribunal from Rs.97,839/- to Rs.1,70,839/-, keeping intact the rate of interest of 7.5% p.a. 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.
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² AIR 2009 SC 3104

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