

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.886 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.15 of 2004, on the file of the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge (Fast Track Court) at Nalgonda (for short, 'the Tribunal'), having got dissatisfied with awarding compensation of Rs.69,760/-, payable by both the respondents jointly and severally, against the original claim of Rs.1,50,000/-, with interest at 7.5% *per annum* from the date of petition till realisation, *vide* the order of the Tribunal dated 29.11.2006, for the injuries sustained by him in a motor accident occurred on 22.10.2003.

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 Bus (hired by A.P.S.R.T.C.) bearing registration No.AP-24U-4044 (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 22.10.2003 at about 06-15 p.m., when the petitioner, along with others, was travelling by the crime vehicle from Nalgonda to Bhongir, and when it reached near the outskirts of Narkatpally village, the driver of the vehicle drove it in a rash and negligent manner, at high speed, and dashed against a lorry bearing

registration No.AP-28U-5308 (for short, 'the lorry'), which was coming in their opposite direction; as a result of which, the petitioner sustained multiple grievous injuries. The petitioner sustained fracture of left humerus (left heel), fracture of pubic ramie right side, fracture of left arm, fracture of ribs on both sides, grievous injury on fore-head, lower jaw, head and other injuries all over the body. Immediately after the accident, the petitioner was shifted to Kamineni Hospitals, Narkatpally; wherein he underwent treatment and incurred medical expenditure. Subsequently, a case in Crime No.131 of 2003 for the offence under Section 337 I.P.C. was registered by the Narkatpally P.S. against the driver of crime vehicle. Due to the accident, the petitioner sustained grievous injuries and mental agony. Hence, claimed compensation of Rs.1,50,000/- against both the respondents, who are owner and insurer of crime vehicle.

6. Respondent No.1-owner of the crime vehicle filed counter contending that the accident occurred only due to negligent driving of the driver of lorry, which was coming in its opposite direction, but the petitioner wantonly did not implead the owner and insurer of the lorry as parties, which is fatal. It was further contended therein that the petitioner received only simple injuries and, as on the date of accident, the crime vehicle is validly insured with the 2nd respondent, 2nd respondent-insurer alone is liable to pay compensation and, finally, contended that the compensation claimed is excessive, exorbitant and sought for dismissal of the Petition.

7. Respondent No.2-insurer of the crime vehicle filed counter more or less raising the similar contentions raised by the 1st respondent *i.e.*, the accident occurred only due to the rash and negligent driving of the driver of lorry and as such the petition is bad for non-joinder of necessary parties. Further contended that the vehicle number of the crime vehicle mentioned in the claim petition is not tallying with the series of policies

issued by it, however, simply arrayed the 2nd respondent, being the insurer of the said vehicle, and finally contended that 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 to 3 and the documents Exs.A.1 to A.12, Ex.C-1 and Ex.B-1, awarded the compensation of Rs.69,760/- (i.e., Rs.8,000/- towards simple injuries, Rs.30,000/- towards grievous injuries, Rs.12,260/- towards medical expenses and investigations, Rs.15,000/- towards expenses incurred as inpatient and Rs.4,500/- towards loss of income) 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 08.07.2016. 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

¹ 2001(1) ALT 495 (D.B.)

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 would submit that the petitioner has suffered grievous injuries and was bedridden, there is permanent loss of earning capacity. The Tribunal has granted only Rs.69,760/- against the original claim of Rs.1,50,000/-, which is quite unreasonable and unjust and, ultimately, prayed to enhance the compensation to Rs.1,50,000/-, as claimed in the petition.

11. On the other hand, learned standing counsel appearing for the 2nd respondent-insurer contended that the Tribunal had taken all the factors into consideration and granted compensation though there was no rashness and negligence on the part of the driver of crime vehicle, but there was negligence on the part of the driver of lorry, its owner and insurer are necessary parties to this petition, and finally prayed for dismissal of the Appeal.

12. In view of the rival contentions, the points that arise for consideration are:

- 1) Whether there was rashness and negligence on the part of the driver of crime vehicle?
- 2) Whether the owner and insurer of lorry are proper and necessary parties to the petition?
- 3) Whether the petitioner is entitled for enhancement of compensation?

13. **POINT Nos.1 and 2**: Though the 2nd respondent-insurer of crime vehicle contended that there is no rashness and negligence on the part of

the driver of crime vehicle and the accident occurred due to the rash and negligent driving of the driver of lorry, neither he adduced any evidence nor got marked any documents to substantiate his claim. The oral and documentary evidence placed on record demonstrates the rashness and negligence on the part of the driver of crime vehicle. There is nothing to take a different opinion. There is no substance in the contention raised on behalf of the 2nd respondent-insurer. As per the evidence available on record, the crime vehicle was insured with the 2nd respondent, as on the date of accident, under the original of Ex.B-1, copy of insurance policy. There are no violations of terms and conditions of Ex.B-1 insurance policy. Therefore, the order of the Tribunal, insofar as directing the respondents to jointly and severally pay the compensation awarded to the petitioner, is sustainable.

14. **POINT No.3:** As seen from the evidence of PW.1 and P.W.3, Dr. A Satish Kumar, the petitioner suffered following injuries:

- 1. Clinically suspected fracture of left humerous;
- 2. Fracture of rib; and
- 3. Three other simple injuries on fore-head, below chin and left ankle.

15. The Tribunal, while dealing with the ocular and documentary evidence available on record, granted the compensation, as detailed below:

S.No.	Name of the Head	Compensation awarded
1.	Grievous injuries	Rs.30,000/-
2.	Simple injuries	Rs.8,000/-
3.	Medical expenses and investigations	Rs.12,260/-
4.	Hospital expenses as inpatient	Rs.15,000/-
5.	Loss of income	Rs.4,500/-
TOTAL		Rs.69,760/-

16. It is evident from the record that the petitioner suffered the injuries, as narrated above, for which the Tribunal granted Rs.38,000/-. The Tribunal has not left any simple or grievous injury un-attended, while awarding compensation. Further, the Tribunal has also granted Rs.12,260/- towards medical expenses and investigations, and Rs.15,000/- towards petitioner's hospital expenses as inpatient and Rs.4,500/- towards loss of earnings for three months, in view of the nature of occupation of the petitioner. Thus, the Tribunal has granted a compensation of Rs.69,760/- on all heads, by analyzing the entire evidence on record oral and documentary, by holding that both the respondents to jointly and severally liable to pay the compensation with interest at 7.5% p.a. from the date of petition till realization. Viewed from any angle, there is no justifiable ground to enhance the compensation, as contended by learned counsel for the petitioner. However, the appellant-petitioner is permitted to withdraw the entire amount.

17. In the result, the Appeal is dismissed confirming the order dated 29.11.2006, passed in O.P. No.15 of 2004 by the Tribunal.

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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HON'BLE Dr. JUSTICE SHAMEEM AKTHER

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