

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.1160 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.643 of 2003, on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Adilabad (for short, 'the Tribunal'), having got dissatisfied with awarding compensation of Rs.62,000/-, against the original claim of Rs.2,00,000/-, being directed to be payable by all the respondents jointly and severally, with interest at 7.5% *per annum* from the date of petition till realisation, *vide* the order of the Tribunal dated 21.12.2006, for the injuries sustained by her in a motor accident occurred on 24.12.2002.

2. Appellant herein is the petitioner-injured, respondents 1 and 2 herein are the owners of Auto bearing registration No.AP-1T-6604 (for short, 'the crime vehicle') and the 3rd respondent herein is the insurer of the crime vehicle.

3. Heard the arguments of learned counsel for the appellant-petitioner and perused the record.

4. In spite of service of notice on respondents 2 and 3, none entered appearance on their behalf and it is submitted that the 1st respondent herein is not a necessary party to this Appeal.

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

6. The case of the petitioner, in brief, is that on 24.12.2002, when he was travelling by the crime vehicle from Soan to Siddapur village, and

when it reached near Kadthal village bus stage on NH-7 road, the driver of the crime vehicle drove the same at high speed in a rash and negligent manner and applied sudden breaks, as a result of which, the crime vehicle turned turtle and the petitioner fell down from the auto and sustained fracture of left thigh bone (femur), injury on left wrist and several injuries on other parts of the body. Immediately, the petitioner was shifted to Government Hospital, Nirmal and, after first-aid, she was referred to Orthopaedic Surgeon, as such she was admitted in a private hospital, underwent treatment as in-patient from 24.12.2002 to 26.12.2002 and 27.12.2002 to 10.01.2002 in another private hospital at Nizamabad, for which the petitioner incurred a medical expenditure to a tune of Rs.40,000/-. The Soan Police registered a case in Crime No.57 of 2002 against the driver of crime vehicle. Prior to the accident, the petitioner was hale and healthy and used to earn Rs.1,500/- p.m. by rolling beedies, but due to the accident, the petitioner is not in a position to attend to her works and suffered mental agony. Hence, claimed compensation of Rs.2,00,000/- against all the respondents, who are owners and insurer of crime vehicle.

7. Respondents 1 and 2, being owners of the crime vehicle, remained *ex parte* before the Tribunal.

8. 3rd respondent, insurer of the crime vehicle, filed counter denying the material allegations of the petition *inter-alia* contending that there is no rash and negligence on the part of the driver of crime vehicle and the auto was overloaded with passengers, more than its seating capacity, as such the driver was not holding valid driving license at the time of accident, which is in violation of the terms and conditions of insurance policy, and finally contended that the compensation claimed by the petitioner is excessive and exorbitant and sought for dismissal of the petition.

9. The Tribunal, after framing issues and, considering the evidence of P.Ws.1 and 2 and the documents Exs.A-1 to A-9 and Ex.C-1 and C-2, awarded compensation of Rs.62,0000/- (*i.e.*, Rs.15,000/- towards fracture injury on left thigh, Rs.1,000/- for simple injury on wrist, Rs.25,000/- towards pain and suffering, Rs.10,000/- towards future operation expenses, Rs.10,000/- towards medical expenses and Rs.1,000/- towards transportation expenses) with interest at the rate of 7.5% *per annum* from the date of petition till realisation, making all the respondents jointly and severally liable to pay the compensation.

10. The Tribunal, while dealing with the subject matter of the Appeal, has framed the following issues:

1. Whether the petitioner sustained injuries in motor accident dt.24.12.2002 involving vehicle No.AP.1.T.6604?
2. If so, whether the accident took place on account of rash and negligent driving of the vehicle bearing No.AP.1.T.6604 by the respondent No.1's driver?
3. Whether the petitioner is entitled for compensation? If so, to what amount and from whom?
4. To what relief?

11. The Tribunal answered all the above issues in favour of the petitioner and ultimately granted a compensation of Rs.62,000/-, as against the claim of Rs.2,00,000/- made by the petitioner, tagging the liability against the owner and insurer of the crime vehicle relying on the evidence of P.Ws.1 and 2 and the documents, such as Ex.A-1 – certified copy of F.I.R, Ex.A-2 – certified copy of injury certificate, Ex.A-3 – certified copy of charge sheet, Ex.A-4 – copy of insurance cover note, Ex.A-5 – copy of R.C. book, Ex.A-6 – bunch of medical bills, Ex.A-7 – medical

reports (3), Ex.A-8 – x-ray films (2), Ex.A-9 – photo of petitioner and Exs.C-1 and C-2 – prescription chits. There is also specific evidence of P.W.1 and the documents marked clearly demonstrates the rashness and negligence on the part of the driver of crime vehicle and P.W.1, petitioner, suffering the aforesaid injuries in the accident by traveling in crime vehicle and the crime vehicle was validly insured with the 3rd respondent. There is nothing to take a different view and disturb the finding of the Tribunal on this aspect.

12. The Tribunal has granted a compensation of Rs.62,000/-, detailed below, in favour of the petitioner with interest at the rate of 7.5% p.a. from the date of petition till the date of realization.

Sl. No.	Name of the Head	Amount of compensation
1.	Fracture injury on left thigh	Rs.15,000/-
2.	Simple injury on wrist	Rs.1,000/-
3.	Pain and suffering	Rs.25,000/-
4.	Future operation expenses	Rs.10,000/-
5.	Medical expenses	Rs.10,000/-
6.	Transportation expenses	Rs.1,000/-
TOTAL		Rs.62,000/-

13. The Tribunal has not granted any compensation for the loss of earnings, though the evidence of P.W.1, petitioner, reveals that she was 30 years old, making beedies and earning Rs.1,500/- p.m. As per the evidence of P.W.2, doctor, there is nothing to disbelieve that the petitioner did not suffer fracture on left thigh (femur) and underwent operation, which is grievous and another simple injury. Considering the evidence of the petitioner that she was a labourer, making beedies and earning Rs.1,500/- p.m. and there is a fracture on her left thigh (femur), which is grievous in nature, it can safely be concluded that the petitioner did not work for a period of six months, an amount of Rs.6,000/- is granted towards loss of earnings @ Rs.1,000/- per month. The Tribunal has granted Rs.15,000/-

towards fracture injury on left thigh (femur), which is low, and the same is increased to Rs.20,000/-.

14. As far as the award of compensation on other scores is concerned, it is just and reasonable and no interference is warranted.

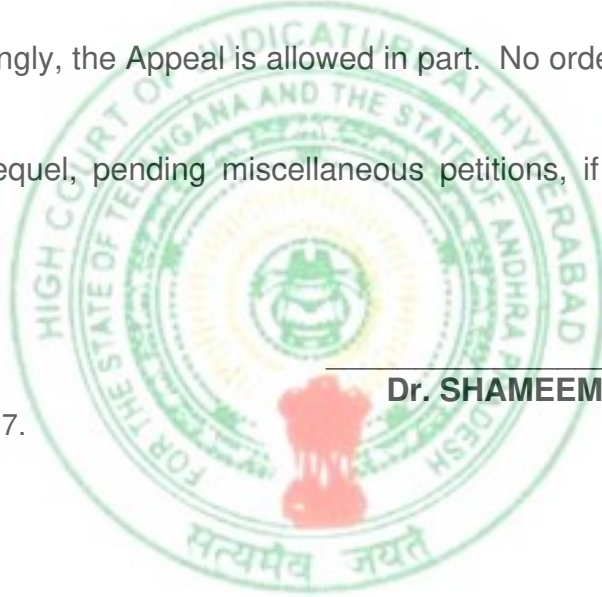
15. In the result, the compensation payable to the appellant-petitioner is enhanced to Rs.73,000/- from Rs.62,000/- with interest at the rate of 7.5% p.a. from the date of petition till the date of realization. On deposit, the appellant-petitioner is permitted to withdraw the entire amount. The other conditions imposed by the Tribunal remain un-changed.

16. Accordingly, the Appeal is allowed in part. No order as to costs.

17. As a sequel, pending miscellaneous petitions, if any, shall stand closed.

Date: 21.07.2017.
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