

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No. 931 OF 2007

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), by the appellant, who is the petitioner in O.P. No.699 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Nalgonda (for short, 'the Tribunal'), having got dissatisfied with the award of compensation of Rs.1,10,265/- with interest at the rate of 7.5% per annum from the date of petition till realisation granted by the Tribunal, vide the order dated 04.01.2007, as against the claim of Rs.4,00,000/- laid under Section 166 of the Act for the injuries sustained by him in a motor accident occurred on 14.04.2003.

2. Heard both the learned counsel for the appellant-petitioner and the learned Standing Counsel for respondent No.2-insurer, apart from perusing the material available on record. The appeal against respondent No.1-owner of the crime vehicle is dismissed on 08.07.2016 for default. However, dismissal of the appeal for default against respondent No.1-owner of the vehicle is of no consequence to decide the quantum of compensation, in view of the decision of a Division Bench of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others**¹.

3. Learned counsel for the appellant-petitioner would submit that there was no rashness and negligence on the part of the appellant; the accident occurred only due to the rash and

¹ 2001(1) ALT 495 (D.B.)

negligent driving on the part of the driver of the crime vehicle; the Tribunal erroneously held that the appellant is 50% responsible for occurrence of the accident and, consequently, awarded 50% of the compensation arrived at; the compensation arrived by the Tribunal was also meagre; and ultimately, prayed to enhance the compensation.

4. On the other hand, learned Standing Counsel appearing on behalf of respondent No.2-insurer vehemently contended that there was head-on-collision between the crime lorry and the motorcycle of the appellant and the appellant has contributed for occurrence of the accident; the Tribunal while analysing the entire evidence on record rightly held that the driver of the crime lorry and the rider of the motorcycle are equally responsible for occurrence of the accident; the Tribunal has rightly deducted 50% of the compensation assessed and granted Rs.1,10,265/-; while determining the compensation, the Tribunal has taken all the factors into consideration and granted just and reasonable compensation; there is nothing to substitute another opinion; and ultimately, prayed to confirm the order under appeal.

5. In view of the contentions putforth by both sides, the following points have come up for determination:

- (1) Whether the driver of the crime lorry bearing registration No.AP 28T 8109 and the rider of the motorcycle (appellant herein) are equally responsible for occurrence of the accident?

(2) Whether the appellant is entitled for enhancement of compensation?

(3) Whether the impugned order dated 04.01.2007 passed by the Tribunal in O.P. No.699 of 2003 is liable to be confirmed?

6. Point No.1: The appellant is the rider of the motorcycle. His evidence before the Tribunal as P.W.1 reveals that on 14.04.2003 at about 10-00 p.m., when he was proceeding by his motorcycle in normal speed on the extreme left side of the road and reached the outskirts of Konda Bheemanapally village, the crime lorry bearing registration No.AP 28T 8109 came in a rash and negligent manner and dashed his motorcycle in opposite direction, due to which, he suffered grievous injuries; the accident occurred due to the rash and negligent driving of the driver of the said crime lorry and there was no negligence on his part. P.W.1 was extensively cross-examined on behalf of respondent No.2-insurer, wherein he reiterated the occurrence of accident due to rash and negligent driving of the driver of the crime lorry. Ex.A.1 is the certified copy of the F.I.R., Ex.A.2 is the certified copy of the charge sheet, Ex.A.3 is the certified copy of the injury certificate of the appellant, Ex.A.4 is the disability certificate issued by the District Medical Board, Nalgonda, Ex.A.5 is the discharge summary issued by Yashoda Hospital, Hyderabad, Ex.A.6 is the bunch of outpatient cards, Ex.A.7 is the discharge card issued by NIMS, Exs.A.8 and A.9 are the bunch of lab reports, medical prescriptions and medical bills and Exs.A.10 and A.11 are X-ray films. All these documents

reveal that the appellant suffered grievous injuries on account of the accident occurred due to rash and negligent driving of the driver of the crime lorry bearing registration No.AP 28T 8109. Though respondent No.2-insurer contended that the accident occurred due to rashness and negligence on the part of the appellant, it has not examined any witness to substantiate the same. The Tribunal, while dealing with the issue of rashness and negligence, had stated that the police have not prepared the scene of offence panchanama and other documents and, if those documents are placed on record, it would have been easy for the Tribunal to determine the rashness and negligence. However, on analysing the entire evidence, the Tribunal held that had the appellant was cautious and careful, he would have averted the accident and, ultimately, held that the appellant herein and the driver of the crime lorry are equally responsible for occurrence of the accident, i.e., in the ratio of 50:50. It is very difficult to endorse the view taken by the Tribunal in this regard, since there is no evidence on behalf of either respondent No.1-owner or respondent No.2-insurer. There is no document to apportion the responsibility for occurrence of the accident in the ratio of 50:50, as determined by the Tribunal. If so, respondent No.2-insurer could have examined the driver of the crime lorry to substantiate the same. The investigation conducted by the police also reveals the rashness and negligence on the part of the driver of the crime lorry. Nothing can be attributed to the investigating officer and the investigation cannot be faulted. In view of the facts and circumstances, it can be

safely concluded that the driver of the crime lorry bearing registration No.AP 28T 8109 is only responsible for occurrence of the accident. This point is answered accordingly.

7. Point Nos.2 and 3: As seen from the material available on record, the Tribunal had analysed the evidence on record in toto regarding the injuries sustained by the appellant in the accident and ultimately, held the disability suffered by the appellant as 50% on account of the accident. The said finding is based on record and it cannot be disturbed. The Tribunal taking the age of the appellant as '52' years applied multiplier '10' and taking the income of the appellant as Rs.1,500/- per month, arrived the compensation towards 50% disability at Rs.90,000/- ($\text{Rs.1,500/-} \times 12 \times 10 \times 50\%$). The Tribunal also held that the appellant spent an amount of Rs.1,30,530/- towards medical expenses. This finding is also based on the material placed before the Tribunal. The Tribunal has rightly arrived the total compensation at Rs.2,20,530/-, but granted 50% of the said amount, i.e., Rs.1,10,265/-, holding 50% contributory negligence on the part of the appellant for occurrence of the accident. The said finding given by the Tribunal, with regard to deducting 50% of the compensation, is liable to be set aside in view of the finding on point No.1 that the driver of the crime lorry alone is responsible for occurrence of the accident.

8. There is also no dispute with regard to the insurance policy of the crime vehicle with respondent No.2-insurer, which was marked as Ex.B.1 and the same was in force by the date of accident. Therefore, the Tribunal has rightly tagged liability

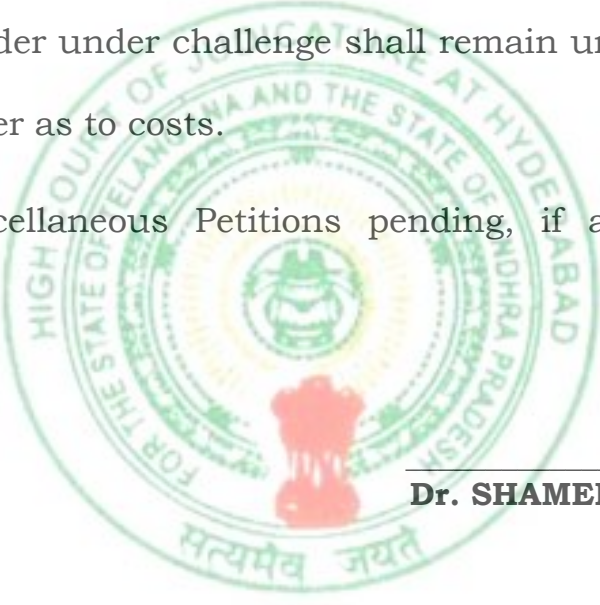
against both respondent No.1-owner and respondent No.2-insurer. Accordingly, point Nos.2 and 3 are answered.

9. In the result, this appeal is allowed in part, setting aside the impugned order dated 04.01.2007 passed by the Tribunal in O.P. No.699 of 2003 to the extent of fixing of 50% liability on the appellant. Consequently, the amount of Rs.1,10,265/- granted by the Tribunal is enhanced to Rs.2,20,530/- with interest at 7.5% per annum from the date of petition till realisation. The appellant is entitled to withdraw the entire amount of compensation. The other terms of the order under challenge shall remain unchanged. There shall be no order as to costs.

10. Miscellaneous Petitions pending, if any, shall stand closed.

Date: 16.06.2017

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Dr. SHAMEEM AKTHER, J