

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.2108 OF 2006

JUDGMENT:

1. That the appellant-injured filed this Appeal to enhance the compensation to Rs.1,00,000/-, aggrieved by the award of compensation of Rs.5,000/- in O.P. No.924 of 2003, dated 27.02.2006, by the Chairman, Motor Vehicle Accidents Claims Tribunal-cum-IV Additional District Judge (Fast Track Court), Nizamabad.

2. On last occasion, when the matter was called, there was no representation on behalf of the appellant; hence, the matter was directed to be listed next week under the caption 'for orders'. Even today, when the matter appeared in the cause list under the caption 'for orders', there is no representation on behalf of the appellant. The appeal against the 1st respondent-owner of the crime vehicle was dismissed for default *vide* order of this Court on 05.07.2016. However, dismissal of the appeal for default against him is of no consequence to decide the quantum of compensation in this Appeal, in view of a Division Bench of this Court in ***Meka Chakra Rao Vs. Yelubandi Babu Rao @ Reddemma and others***¹, wherein it is 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."

3. Heard the arguments of learned standing counsel appearing for the 2nd respondent-insurer, who contended that the appellant did not suffer any grievous injuries; the claim is bogus; Ex.A-3 – certified copy of wound certificate produced by him is not genuine; neither the appellant had taken treatment in the Government Hospital, Balkonda, nor in the Government Hospital, Nizamabad. The Tribunal, however, relying on the recitals made in Ex.A-1 – F.I.R., opined that the appellant had suffered simple injuries granted a compensation of Rs.5,000/- on all scores. Further, the Tribunal has clearly and categorically discussed about the oral as well as medical evidence on record and rightly concluded in partly allowing the Appeal by granting a compensation of Rs.5,000/- and hence there are no merits in the Appeal, ultimately, prayed to dismiss the Appeal.

4. There is no contest on behalf of the 2nd respondent-insurer with regard to involvement of the crime vehicle i.e., lorry bearing No.HR-38-C-7877, in the accident. The only contention raised in this Appeal is that the appellant did not suffer any grievous injuries and as such he is not entitled for enhancement of compensation.

5. Now, the sole point that arises for determination is, whether the appellant is entitled for enhancement of compensation?

6. **POINT**: While dealing with the award of compensation, the Tribunal has relied on the evidence of P.W.1 and Exs.A-1 to A-4, F.I.R., wound certificates and insurance policy. While dealing with the oral and documentary evidence, the Tribunal also addressed letters to the C.S.I. Hospital, Doodgoan, Government Hospital, Balkonda and Government

Hospital, Nizamabad, wherefrom the Tribunal received replies stating that the name of the appellant was neither found in the M.L.C. Registers nor in the in-patient registers of those Hospitals maintained on 16.08.2002 and 17.08.2002. As per the evidence on record, P.W.1 - appellant, after occurrence of the accident, was shifted to the Government Hospital, Balkonda; from there to Government Hospital, Nizamabad and x-ray was taken there. When the Tribunal addressed letters to those Hospitals, there is no such evidence available with them. Further, Ex.A-3 - wound certificate of the appellant reveals that the appellant sustained fractures of right fore-arm and fracture of left leg ankle. The Tribunal opined that as per the medical terminology fracture of fore-arm cannot be termed and there should be a specific mention as to which part of the fore-arm was injured; so also with regard to the 2nd injury, by examining Ex.A-3 – wound certificate, it did not speak whether it was issued by a medical practitioner. Had the original of Ex.A-3 was issued by a medical practitioner, he could not have defined the injuries as mentioned therein. Had the appellant was immediately admitted in the Government Hospital, Nizamabad and x-ray was taken, definitely, he would have referred the said hospital with regard to the treatment undergone by him. No such record is produced before the Tribunal. While stating the reasoning, the Tribunal had rightly disbelieved the wound certificate and other documents. Ex.C-1 is the letter addressed by the Superintendent, Government Hospital, Nizamabad; Ex.C-2 is the letter addressed by the C.S.I. Hospital, Doodgoan and Ex.C-3 is the letter addressed by C.A.S, Balkonda. Though the Tribunal tried to found the factual position of the appellant with regard to injuries as contended by him, in spite of best efforts the Tribunal could not procure the required information and in contra it revealed that the appellant approached the Tribunal with bogus claim as he did not reveal the correct account of the injuries suffered and the treatment undergone by him. However, going

through the contents of Ex.A-1 – F.I.R., the Tribunal has granted an amount of Rs.5,000/- towards simple injuries, pain and suffering and medical expenses. Hence, in view of the above circumstances, no other opinion can be substituted, with regard to enhancement of compensation. Accordingly, there is no infirmity in the order under appeal.

7. In the result, the Appeal is dismissed confirming the impugned order under Appeal.

8. As a sequel, pending miscellaneous petitions, if any, shall stand dismissed as infructuous. No order as to costs.

Date: 27.02.2017.
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Dr. SHAMEEM AKTHER, J



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