

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No. 1335 OF 2006

JUDGMENT:

1. This Appeal is preferred against the Order dated 13.3.2006 in MVOP No. 260 of 2000 on the file of IX Additional District & Sessions Judge (FTC), Machilipatnam (for short, 'the Tribunal'), wherein the Tribunal granted a compensation of Rs. 40,000/- against the original claim of Rs. 2,50,000/-.

2. Appellant herein is the petitioner-injured, 1st respondent herein is the driver, 2nd respondent is the owner and 3rd respondent is the insurer of the lorry bearing No. AP 16 V 1508 respectively (for short 'the Crime Vehicle'), who filed a petition before the Tribunal, under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), claiming compensation of Rs. 2,50,000/- on account of the injuries sustained by him in a motor vehicle accident occurred on 22.6.1999.

3. The case of the appellant/petitioner is that, on 22.06.1999, at about 5.30 a.m., while the appellant sitting in the lorry bearing No. AP 16V 1508, as cleaner, proceeding towards palghat from Gudivada with load, the lorry driver to avoid collusion with a vehicle coming in opposite direction, applied sudden breaks, the vehicle got skidded went out of control and turned turtle on its left side, due to rain. As a result of which, the appellant/petitioner sustained grievous injuries all

over his body and shifted to North Bengal Medical College Hospital for treatment and he was admitted in Silliguri Nursing Home Private Limited. His right hand was amputated up to shoulder. The accident occurred due to negligent driving of the 1st respondent/driver. The appellant was 26 years and he was hale and healthy person at the time of accident and he was earning Rs. 3000/- per month and maintaining his old parents and children. He filed the petition seeking compensation of Rs. 2,50,000/- against respondents.

4. Respondents 1 & 2, driver and owner of the crime vehicle, remained ex parte before the Tribunal.

5. Respondent No. 3, insurer of the crime vehicle, filed counter denying the claim of the appellant and contended that the age, avocation and monthly income of the appellant/injured and called upon to put to strict proof and there is no negligence on the part of the driver of crime vehicle, the appellant was traveling as a cleaner of the crime lorry by sitting in the cabin, must have been sleeping and probably on account of the impact of sudden application of breaks he must fell down from the lorry due to his own negligence and contended that the compensation claimed by the appellant was highly excessive, exorbitant and prayed for dismissal of the petition.

6. The Tribunal, after framing the issues and on consideration of the pleadings and evidence of PW-1, the documents Exs.A-1 to A10 and Ex B1, granted compensation of Rs. 40,000/- with proportionate costs and interest at the rate of 7.5% p.a. from the date of petition till

realization making respondents 1 to 3 jointly and severally liable to pay the compensation.

7. Being aggrieved by the quantum of compensation, the appellant preferred this Appeal seeking enhancement of the compensation.

8. Heard the arguments of Sri Dammalapati Srinivas, learned counsel appearing for appellant and Sri P. Harinath Gupta, learned Standing Counsel appearing for third respondent-National Insurance Company Limited.

9. The appeal against respondent Nos.1 & 2 – driver and owner of the crime vehicle, was dismissed for default vide order of this Court dated 28.6.2016. However, dismissal of the appeal for default against them 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 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

¹ 2001(1) ALT 495 (D.B.)

of the Insurance Company survives for consideration at the appellate stage."

10. Learned counsel appearing for appellant contended that though there is an amputation of right hand, the Tribunal granted an amount of Rs. 40,000/-, which is meager and the evidence would show that the appellant was working as lorry cleaner on the crime lorry on the date of accident i.e., on 22.6.1999. The appellant had filed several documents i.e., Exs. A1 to A10 and deposed himself as PW-1 to substantiate his contention for grant of an amount of Rs. 2,50,000/- and contended that the Tribunal erred in not granting the compensation as claimed.

11. On the other hand, learned counsel appearing for 3rd respondent contended that the Tribunal has analyzed the entire evidence on record and awarded just and reasonable compensation of Rs. 40,000/-, which is quite reasonable and moderate and the appellant was 40 years old on the date of accident, which needs no interference, and ultimately prayed to dismiss the appeal.

12. In view of the submissions put forth by the learned counsel on either side, the sole point came up for determination is:

“Whether the appellant is entitled for enhancement of compensation?”

13. **POINT:** As per the evidence on record, the appellant suffered crush injury in his right hand while working in the lorry bearing No.

AP 16 V 1508, as cleaner, belonging to the second respondent driven by first respondent in a rash and negligent manner on 22.6.1999. There is an ample evidence on record i.e., Ex. A5- certified copy of FIR in Crime No. 54 of 1999 of Islampur and Ex. A7-certified copy of charge sheet and wound certificates i.e., Exs. A1, A2, A4, A6, A8 and Ex. A10. All these documents and evidence clinchingly establish the amputation suffered by the appellant in his right hand was due to rash and negligent driving of the driver of the above lorry. The Tribunal has given elaborate reasons and determined the same; therefore, no other opinion can be substituted on this score.

14. The evidence of PW-1 and also the documents marked as Ex-A1, discharge certificate issued by Silliguri Nursing Home, Ex.A2-notarized X- ray copy of certificate, Ex. A4- two photos with corresponding negatives, Ex. A5- certified copy of FIR in Crime No. 517 of 199 of Islampur, Ex. A6 Report, Ex. A7- Certified copy of charge sheet, Ex. A-8 – prescription issued by Dr. Aravind Kumar and Ex. A-10- medical certificate of Silliguri Nursing Home, and all these documents clinchingly establish that there is an amputation of right hand of the appellant and he suffered other injuries in the motor accident and no other opinion can be substituted on this score.

15. While determining the compensation, the Tribunal has awarded Rs. 4,000/- towards transportation, Rs. 3,000/- for extra nourishment, Rs. 6,000/- towards medical expenses, Rs. 5,000/- for pain and suffering, Rs. 5,000/- for mental agony, Rs. 15,000/- for one grievous injury, Rs. 2,000/- for one simple injury. In all, the Tribunal granted

compensation of Rs. 40,000/-. As per Ex. A1-discharge certificate issued by Silliguri Nursing Home, the age of the appellant shown as 35 years, he was cleaner of lorry, the Tribunal has not taken into account the amputation of right hand of the petitioner and also did not take into account permanent disability arisen due to amputation and the permanent loss of earnings caused to the appellant. So on these scores, an amount of Rs. 2,10,000/- can be granted in addition to the amount granted by the Tribunal, and as such, in all, the appellant is now granted a compensation of Rs. 2,50,000/-, which is quite just and reasonable. Therefore, the order under appeal is modified accordingly.

16. In the result, the MACMA is allowed, enhancing the compensation awarded by the Tribunal from Rs. 40,000/- to Rs. 2,50,000/-, keeping intact the rate of interest of 7.5% p.a. awarded by the Tribunal as it is. After depositing the compensation amount, the appellant is permitted to withdraw the entire amount. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, pending if any, shall stand closed.

Dr. SHAMEEM AKTHER, J

Date: 27.02.2017

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