

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

MACMA NO. 1291 OF 2006

JUDGMENT:

As per order dated 28.6.2016 the appellant was directed to serve the unserved respondents, in default the appeal shall stand dismissed as against the unserved respondents. The appellant has not complied with the said order and the order dated 28.6.2016 was given effect to, as per note endorsed by the Registry on the proceedings sheet. Thus the appeal stands dismissed as against the first respondent and even in the absence of first respondent, the owner of the crime vehicle, the appeal can be proceeded against the second respondent-insurance company in view of the decision of a Division Bench of this Court reported in *Meka Chakra Rao vs Yelubandi Babu Rao @ Reddemma*¹

Heard learned counsel for the appellant as well as learned standing counsel appearing for the second respondent.

This appeal is preferred by the claimant against the award dated 16.3.2006 passed by the Motor Accidents Claims Tribunal, Kurnool in MVOP No. 199 of 2004 whereby the Tribunal granted Rs.28.890/- for the injuries sustained by the appellant in a motor vehicle accident.

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

It is the case of the petitioner that on 2.7.2003 in the night the petitioner along with his family members was proceeding in a van

¹ 2001 (1) ALD 453

bearing No. AP-12-T-9955 from Hyderabad to Gaddamvaripalli of Cuddapah district and when the van reached Nannoor village of Orvakal Mandal of Kurnool district, the driver drove the van in a rash and negligent manner at high speed and lost control over the van and the van turned turtle. Apart from other occupants, the petitioner sustained grievous injuries, he was shifted to Government General Hospital, Kurnool where he took treatment for one week. The petitioner incurred Rs.15,000/- towards medical and attendant charges. Before the accident, the petitioner was hale and healthy and he was aged about 30 years and was earning Rs.1.00 lakh per annum by doing cultivation. Due to the injuries, the petitioner could not regain normal movements of his left hand and he is not in a position to lift any weight with his left hand and not able to do any work with his left hand. The disability sustained by the petitioner is permanent. The accident occurred due to the rash and negligent driving of the van by its driver and the said van belonged to the first respondent and insured with the second respondent and both the respondents are jointly and severally liable to pay the compensation.

First respondent remained absent. Second respondent filed a counter denying the mode and manner of accident as alleged by the petitioner. It is contended by the second respondent that the accident had not occurred due to the negligence on the part of driver of van, but it was due to fault of driver of a stationed lorry who parked the lorry on the road without taking due precautions. As there was no indicator of parking, the van driver went ahead and the van turn turtle

and the inmates of the van including the petitioner sustained minor injuries. The particulars furnished by the petitioner about his age, nature of injuries, treatment taken by him and medical expenses etc are not correct. The compensation claimed is highly excessive and exorbitant.

Before the Tribunal, the petitioner examined himself as P.W.1 and doctor who treated him as P.W.2 and marked Exs.A1 to A9. No oral or documentary evidence was adduced on behalf of respondents.

On the basis of the evidence, oral and documentary, adduced by the petitioner, the Tribunal held that the accident occurred due to the rash and negligent driving of the van by its driver and in respect of the injuries, the Tribunal found that the petitioner sustained permanent disability of 7% and granted total compensation of Rs.28.890/- with interest of 7.5 P.A. from the date of petition till the date of realization.

The point for consideration is,

Whether the petitioner is entitled for an enhancement of compensation amount?

POINT:

There is no contest with regard to the accident which occurred due to the rash and negligent driving of the van by its driver and also about the coverage of the insurance in respect of the crime vehicle and it's validity on the date of accident. Therefore, the findings of the Tribunal on these aspects are upheld.

It is the contention of the learned counsel for the petitioner that the Tribunal has taken the income of the petitioner at Rs.1500/- per

month and while holding the percentage of disability as 7%, it awarded compensation of Rs.21,420/- towards loss of future earnings and Rs.7,320/- towards medical bills and other charges, thus a total compensation of Rs.28.890/- was awarded to the petitioner. The learned counsel further contended that the Tribunal ought to have taken Rs.6,000/- per month towards monthly earnings of the petitioner and assessed the loss of future earnings on that income.

On the other hand, the learned standing counsel for second respondent-insurance company contended that there is no medical certificate produced by the petitioner showing that he suffered a permanent disability of his left hand and therefore there was no basis for the Tribunal to hold that the petitioner suffered a partial permanent disability of 7% and the award of the Tribunal granting compensation is not sustainable.

P.W.1 is the injured petitioner in this case. P.W.2 is the doctor who treated the petitioner. The evidence of P.W.1 shows that he was 31 year-old, hale and healthy before the accident, he has agricultural land and supervising his land, the land is standing in the name of his mother and in the road accident he suffered fracture in his left hand which was operated upon. He is not in a position to lift weight with his left hand and not in a position to do any work and also unable to attend his agricultural work.

P.W.2's evidence shows that he was Assistant Professor in Orthopedic in Government General Hospital, Kurnool, he examined P.W.1 and found fracture of left hand, he operated the fracture, fixed

plates and screws on 7.7.2003. The petitioner was discharged from the hospital on 9.7.2003. Thereafter the petitioner took follow up treatment from him. P.W.2 again examined P.W.1 on 18.1.2006 and found wasting of left fore arm and arm muscles and stiffness of left elbow joint. He further deposed that the petitioner could not do his routine agricultural work. He estimated the permanent disability at 10%. The petitioner cannot lift heavy weights with left hand. Ex.A9 is the X-Ray and the disability is permanent.

Though PWs 1 and 2 were cross-examined at length, they reiterated the same in their chief-examination and nothing was elicited from their cross-examination. Thus it is established from the evidence that the petitioner suffered a fracture in his left hand, surgery of fracture was done and plates were fixed. P.W.2 has not given any medical certificate of disability certifying that the petitioner sustained permanent disability of 10%. In the absence of medical certificate and from the nature of fracture, the Tribunal determined the disability as 7%. So the findings of the Tribunal in this regard cannot be interfered with.

Coming to the compensation part, the Tribunal assessed the income of the petitioner at 1500/- per month, which, in my opinion, is a meagre one considering the fact that now a days labourers, workers, agricultural workers etc earn Rs.3000/- per month. Therefore, the income of the petitioner is taken as Rs.3,000/- per month. The monthly loss of the petitioner is assessed at Rs.3,000x7 divided by 100=Rs.210. The petitioner was aged about 30 years and for that age,

the suitable multiplier is 17. The loss of future earnings is assessed at Rs.210x12x17=42840/-. While determining the compensation, the Tribunal has taken into consideration Ex.A5-medical bills and other scores and granted compensation of Rs.7,320/- towards medical bills, which is upheld. Thus the petitioner is entitled to a total compensation of Rs.50,160/- which is rounded off to Rs.50,000/- (Rupees Fifty Thousands only) with interest @ 7.5% P.A. from the date of petition till the date of realization. The petitioner is permitted to withdraw the entire compensation amount.

The appeal is accordingly partly allowed. Miscellaneous applications, if any pending, shall stand closed. No order as to costs.

Dt. 24.1.2017
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SHAMEEM AKTHER, J

