

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.78 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.580 of 2002, on the file of the Chairperson, Motor Accidents Claims Tribunal-cum-XII Additional Chief Judge, City Civil Court (Fast Track Court) at Hyderabad (for short, 'the Tribunal'), having got dissatisfied with awarding compensation of Rs.90,000/-, against the original claim of Rs.3,00,000/-, payable by both the respondents jointly and severally with interest at 7.5% *per annum* from the date of petition till realisation, *vide* order of the Tribunal dated 17.04.2006, for the injuries sustained by her in a motor accident occurred on 01.12.2001.

2. Heard the arguments of learned counsel for the appellant-petitioner and the learned Standing Counsel for the 2nd respondent-insurer and perused the record.

3. Appellant herein is the petitioner-injured, 1st respondent herein is the owner of Kinetic Honda bearing registration No.AP-20G-601 (for short, 'the crime vehicle') and the 2nd respondent herein is its insurer.

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

5. The case of the petitioner, in brief, is that on 01.12.2001 at about 06-00 a.m., when the petitioner was returning to her Tanda after attending nature's call, the crime vehicle, being driven by its driver at high speed in a rash and negligent manner, dashed against her; as a result of which, the petitioner sustained head injury apart from other injuries all over her body. Immediately after the accident, the petitioner was shifted to Cure Hospital,

Khammam, Aware Hospital, Hyderabad and then to Osmania General Hospital, Hyderabad, where she underwent treatment and incurred medical expenditure to a tune of Rs.90,000/-. Prior to the accident, the petitioner was hale and healthy and used to attend the agricultural works but due to the accident, the petitioner is not in a position even to attend her works and also suffered mental agony. Hence, claimed compensation of Rs.3,00,000/- against both the respondents, who are owner and insurer of the crime vehicle.

6. Respondent Nos.1 and 2 being owner and insurer of the crime vehicle separately filed their counters raising the similar contentions that the accident did not occur due to the rash and negligent driving of the driver of crime vehicle. It was further contended there is falsification of medical bills to claim the excess amount and, finally, contended that the compensation claimed is excessive, exorbitant and sought for dismissal of the Petition.

7. The Tribunal, after framing issues and, considering the evidence of P.Ws.1 to 4 and the documents Exs.A.1 to A.30 and Ex.B-1, awarded the compensation of Rs.90,000/- (i.e., Rs.8,000/- towards transportation, Rs.6,000/- towards extra nourishment, Rs.15,000/- towards medical expenses, Rs.1,000/- towards damages to clothing, Rs.10,000/- towards pain and suffering and Rs.50,000/- towards future loss of earnings) with interest at the rate of 7.5% *per annum* from the date of petition till realisation, making both the respondents jointly and severally liable to pay the compensation.

8. The appeal against the 1st respondent-owner of the crime vehicle was dismissed for default on 05.07.2016. However, absence of 1st respondent-owner of the crime vehicle is of no consequence to decide the

quantum of compensation in this appeal, in view of a Division Bench decision of this Court in ***Meka Chakra Rao Vs. Yelubandi Babu Rao @ Reddemma and others***¹, wherein it was 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 of the Insurance Company survives for consideration at the appellate stage."

9. Learned counsel for the appellant-petitioner vehemently argued that the petitioner suffered four grievous injuries, hospitalized and has undergone operation but the Tribunal has granted only Rs.10,000/- towards pain and suffering, which is very un-reasonable; on other scores also, the Tribunal did not grant just compensation, and ultimately prayed to enhance the compensation to Rs.3,00,000/-, as claimed in the petition.

10. On the other hand, learned counsel appearing for the 2nd respondent-insurer would submit that the Tribunal has granted compensation on all heads; in total, granted a compensation of Rs.90,000/-; there is no evidence of petitioner suffering grievous injuries; the compensation granted by the Tribunal is adequate and just, there is nothing to interfere with the impugned order of the Tribunal and ultimately prayed to dismiss the Appeal.

¹ 2001(1) ALT 495 (D.B.)

11. There is no much contest with regard to the rashness and negligence on the part of the crime vehicle and its insurance with the 2nd respondent.

12. The only point for determination is whether the appellant-petitioner is entitled for enhancement of compensation, as prayed for?

13. **POINT:** Admittedly, the petitioner, who was examined as P.W.1, did not state the injuries suffered by her in the chief-affidavit; she simply stated that she has undergone operation. PW.4, Dr. D. Mohan Krishna, also did not state the injuries suffered by the petitioner in the road accident. Ex.A-4 is the Medico Legal Register, wherein there is no mention of injuries suffered by the petitioner. Basing on the material on record, the Tribunal had analyzed the evidence of P.Ws.1 to 4 and the documents marked as Exs.A-1 to A-30 and Ex.B-1, copy of insurance policy, in awarding the compensation as detailed below:

S.No.	Name of the Head	Compensation awarded
1.	Transportation	Rs.8,000/-
2.	Extra Nourishment	Rs.6,000/-
3.	Medical expenses	Rs.15,000/-
4.	Damages to clothing	Rs.1,000/-
5.	Pain and suffering	Rs.10,000/-
6.	Future loss of earnings	Rs.50,000/-
TOTAL		Rs.90,000/-

14. Learned Tribunal dealt with the matter in detail and granted compensation on all heads, assigned valid reasons, took the income of the petitioner into consideration and granted future loss of earnings to a tune of Rs.50,000/-. There is nothing on record to hold that the compensation awarded by the Tribunal requires to be enhanced. Viewing from any angle, the compensation awarded by the Tribunal is just and reasonable and there is nothing to interfere with the impugned order of the Tribunal.

15. In the result, the Appeal is dismissed confirming the order dated 17.04.2006, passed in O.P. No.580 of 2002 by the Tribunal.

16. As a sequel, pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

Dr. SHAMEEM AKTHER, J

Date: 21.07.2017.
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