

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.2403 OF 2006

JUDGMENT:

1. This Appeal is preferred against the order, dated 31.07.2006, in M.O.P. No.515 of 2004 on the file the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Visakhapatnam (for short, 'the Tribunal').

2. Appellant herein is the petitioner-injured, 1st respondent herein is the driver, 2nd respondent herein is the owner, and 3rd respondent herein is the insurer of the Lorry bearing No.AP.31.W.4433 (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') read with Rule 455 of the A.P. Motor Vehicles Rules, 1989, claiming compensation of Rs.10,00,000/- on account of the injuries sustained by her in a motor vehicle accident occurred on 25.01.2004.

3. The brief facts of the petition are that, on 25.01.2004, at about 11:30 a.m., while the appellant, along with her husband, was traveling as a pillion rider on the Hero Honda motorcycle bearing No.AP27C 1368, from Visakhapatnam to Aruku, and when they crossed Kasipuram village and proceeding on the extreme left side of the ghat road, the crime vehicle came in their opposite direction, at a high speed, in a rash and negligent manner; the driver could not control the crime vehicle, while taking a sharp turn, and dashed the motorcycle of the appellant's husband. As a result of which, the appellant's husband rolled on to the extreme left side of the road and fell into bushes; the appellant also fell down and the front wheels of the crime vehicle ran over the thigh and pelvic bone and also dragged the appellant to a distance of four meters. Immediately, the appellant was

shifted to a nearby P.H.C. at S. Kota and, thereafter, shifted to Seven Hills Hospital, Visakhapatnam for better treatment; wherein, she underwent treatment as inpatient for 33 days and incurred an amount of Rs.6,00,000/- towards medical expenses. Hence, filed the petition seeking compensation of Rs.10,00,000/-.

4. Respondent Nos.1 and 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 be put to strict proof and as such there is no negligence on the part of the driver of crime vehicle and the husband of the appellant drove his motorcycle in a rash and negligent manner and finally contended that the compensation claimed by the appellant is 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 the witnesses P.Ws.1 to 6 and the documents Exs.A-1 to A-20, Exs.X-1 and X-2, and Ex.B-1, granted compensation of Rs.2,16,115/- with proportionate costs and interest at the rate of 7.5% p.a. from the date of petition till realization making Respondents Nos.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 Mr. Sk. Rizwan Ali, learned counsel for the appellant, and Mr. Kota Subba Rao, learned counsel for the 3rd respondent-insurer.

9. The appeal against the respondents 1 and 2-driver and 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 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 of the Insurance Company survives for consideration at the appellate stage."

10. Learned counsel for the appellant submits that the appellant has suffered 40% disability and incurred huge medical expenses and was bedridden and her health is deteriorating day by day. Though there are number of medical bills, evidence of doctor P.W.4 on record and admitting medical bills, the Tribunal has granted a meager compensation of Rs.2,16,115/- disbelieving Ex.A-15 – disability certificate etc., and ultimately prayed to allow this Appeal by enhancing the compensation.

11. On the other hand, learned standing counsel for the 3rd respondent-insurer contended that the Tribunal has analyzed the entire evidence on

¹ 2001(1) ALT 495 (D.B.)

record and held that the appellant is quite well, did not suffer any disability, as contended by the appellant; the compensation granted by the Tribunal is just and reasonable, there is no need to interfere with the same and finally prayed to dismiss the Appeal.

12. In view of the submissions put forth by the learned counsel on either side, the following points have come up for determination:

1. Whether the appellant suffered injuries, due to the rash and negligent driving of the driver of the Lorry bearing No.AP31W 4433?
2. Whether the appellant is entitled for enhancement of compensation?

13. **POINT No.1:** The specific evidence of the appellant, who was examined as P.W.1, is that she suffered injuries due to the rash and negligent driving of the driver of crime vehicle. Ex.A-1 is the attested copy of F.I.R. and Ex.A-5 is the attested copy of Motor Vehicle Inspector's report. Under Ex.A-1 there is a specific mention that the appellant suffered grievous injuries due to the rash and negligent driving of the driver of crime vehicle. Ex.A-5 is the Motor Vehicle Inspectors report, which discloses that there is no mechanical defect in the crime vehicle. P.W.1 further in her evidence has clearly and categorically stated that the accident occurred due to the rashness and negligence on the part of the driver of crime vehicle. P.W.2, who is none other than the husband of the appellant and eye witness to the accident, corroborated with the evidence of the appellant. The Tribunal has analyzed their evidence in detail and held that the appellant suffered injuries to the rash and negligent driving of the crime vehicle and as such no other opinion can be substituted. The point is accordingly answered.

14. **POINT No.2:** The evidence of P.W.1 reveals that she suffered grievous injuries in the accident. She produced Ex.A-1 to A-19 during her examination. P.W.2, husband of the appellant, totally corroborated the evidence of P.W.1 and his driving license is marked as Ex.A-20.

15. The evidence of P.W.3, Medical Superintendent, Seven Hills Hospital, Visakhapatnam is to the extent that the appellant was admitted in their hospital on 25.01.2004 and underwent treatment as inpatient; Ex.X-1 – is the first case sheet of the appellant for the period from 25.01.2004 to 27.02.2004 and Ex.X-2 is the second case sheet for the period from 06.05.2004 to 12.05.2004 marked in his evidence.

16. The evidence of P.W.4, consultant orthopaedic surgeon, who treated the appellant, is that appellant sustained the following injuries at the time of admission:

- 1) Huge defuse boggy swelling over right groin and over proximal 2/3rd thigh;
- 2) Abrasion over proximal 1/3rd thigh;
- 3) Abrasion over post medial aspect of right knee; and
- 4) Superior and inferior public rami fracture on both sides and fracture of ilium.

His evidence further reveals that he referred the appellant to Gynecologist, Urologist, Plastic Surgeon and General Surgeon for better treatment; on 02.02.2004, external fixation was applied for fracture of pelvis. He issued Ex.A-15 disability certificate opining 40% permanent functional disability and as such the appellant cannot run or walk fast and cannot stand for long hours.

17. P.W.5 is General and Laparoscopic Surgeon, who treated the appellant. His evidence reveals that he operated the appellant for making

a diversion colostomy. Subsequently, she was admitted for 2nd time on 06.05.2004 for closure of the colostomy and got discharged on 12.05.2004.

18. P.W.6 is the Plastic Surgeon, who treated the appellant and deposed that there was necrosis of skin over right groin and upper thigh with blisters. The appellant underwent debridement of skin and wound wash was done. Further, there was necrosis of skin extending from right groin over thigh anterior, lateral and posterior aspects, involving right gluteal region, extending down to knee. Large infected haematoma underneath the skin was present. After the treatment, the appellant was taken up for repeated dressings, under anesthesia and skin grafting was done on 11.02.2004. Dressings were continued under anesthesia till her discharge.

19. Thus, the doctors, P.Ws.4 to 6, have spoken about the genuineness of the exhibits and there is specific evidence of the doctors that the appellant suffered above injuries in the motor accident. There is also specific evidence of P.W.4 that he examined the appellant on 25.01.2004 and issued Ex.A-15 disability certificate opining 40% permanent functional disability. There is no reason for P.Ws.4 to 6 medical officers to give false evidence before the Tribunal. Though the medical officers were subjected to lengthy cross-examination, nothing was brought on record to discredit their testimony. In view of the evidence of P.Ws.1 and 2 and the medical officers, it can safely be concluded that the appellant suffered grievous injuries as deposed by P.W.4 and consequently sustained 40% permanent functional disability. As seen from the order of the Tribunal, the Tribunal has granted an amount of Rs.2,16,115/- on all heads, which is a pittance. The Tribunal ought to have considered the 40% permanent functional disability and granted the

compensation. As per the evidence on record, the appellant was aged 26 years, as on the date of accident, and in view of the principle laid down by the Apex Court in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another**², the relevant multiplier applicable to the age group of the appellant is '17'. Though the appellant stated in her evidence that she is working as nutritionist and earning Rs.5,000/- p.m. by producing Ex.A-19 – salary certificate, she failed to examine the person who issued Ex.A-19 salary certificate and hence no credence can be given to it. However, it is an admitted fact that she is working as housewife and assisting her family members. Hence, and in view of the principle laid down by the Apex Court in **Jitendra Khimshankar Trivedi and others Vs. Kasam Daud Kumbhar and others**³, monthly income of the appellant-house-wife can be taken as Rs.3,000/- p.m. The amount of compensation to be awarded under the head of 40% permanent functional disability would come to Rs.2,44,800/-. (Rs.3,000/- x 12 x 17 x 40/100) and the same is rounded off to Rs.2,45,000/-.

20. As seen from the evidence, the Tribunal relying on Exs.A-7 to A-11 and the evidence of P.Ws.3 to 6 rightly awarded an amount of Rs.1,64,459/- by deducting an amount of Rs.13,200/- paid towards room rent and Rs.14,325/- paid towards consumption charges from out of the total bill of Rs.1,86,984/-. Subsequently, taking into consideration Ex.A-8 bill awarded an amount of Rs.6,656/-, deducting Rs.3,600/- room rent and Rs.1,350/- consumption charges, from out of the total bill of Rs.11,606/-. Thereafter, awarded an amount of Rs.5,000/- towards medical expenses. Ex.A-18 is the certificate issued by the employer of P.W.2, husband of the appellant, who is working as Trainee Poultry Service Officer, showing that the appellant has not claimed any amount as reimbursement due to the

² AIR 2009 SC 3104

³ 2015 ACJ 708

accident. Hence, the Tribunal has rightly awarded an amount of Rs.1,81,115/- towards medical expenses.

21. While assessing the compensation under the head of loss of earnings, the Tribunal in lump sum awarded an amount of Rs.10,000/-, which is meager, and the same is increased to Rs.18,000/- (Rs.3,000/- x 6) holding that the appellant did not work for six months.

22. The Tribunal has rightly awarded an amount of Rs.5,000/- towards transportation charges and Rs.20,000/- towards extra nourishment. No different opinion substituted on this score and the same is retained.

23. The following is the tabular form showing the amount of compensation awarded by the Tribunal and awarded by this Court, under each head:

Sl.No.	Name of Head	Awarded by Tribunal	Awarded by this Court
01.	Medical expenses	Rs.1,81,115/-	Rs.1,81,115/-
02.	Transportation	Rs.5,000/-	Rs.5,000/-
03.	Permanent disability 40%	---	Rs.2,45,000/-
04.	Loss of earnings	Rs.10,000/-	Rs.18,000/-
05.	Extra Nourishment	Rs.20,000/-	Rs.20,000/-
TOTAL		Rs.2,16,115/-	Rs.4,69,115/- Rounded off to Rs.4,69,000/-

24. Accordingly, the Appeal is allowed in part, enhancing the compensation awarded by the Tribunal from Rs.2,16,115/- to Rs.4,69,000/-, keeping intact the rate of interest of 7.5% p.a. awarded and other conditions imposed by the Tribunal as it is. Respondent Nos.1 to 3 are jointly and severally liable to pay the compensation. After depositing the compensation amount, the appellant is permitted to withdraw the entire compensation amount.

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

Dr. SHAMEEM AKTHER, J

Date: 16.02.2017.
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