

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.1707 OF 2006

JUDGMENT:

1. That the appellant-injured filed this Appeal to enhance the compensation to Rs.2,25,000/-, aggrieved by the award of compensation of Rs.55,000/- in M.V.O.P. No.759 of 2002, dated 04.05.2006, by the Chairman, Motor Vehicles Accidents Claims Tribunal-cum-VII Additional District Judge (Fast Track Court), Krishna at Vijayawada.

2. The submission of the appellant is that the appellant has suffered three grievous injuries and other injuries all over his body and claimed compensation of Rs.2,25,000/-, which is quite reasonable. To substantiate his claim, the appellant deposed as P.W.1 and also examined P.W.2, the doctor and marked Exs.A-1 to A-10 i.e., criminal case record and his medical record, to prove the compensation claimed by him. The compensation of Rs.55,000/- awarded by the Tribunal is unjust and quite meager and ultimately prayed to enhance the compensation.

3. During pendency of the Appeal, the claim against the Respondent Nos.1 and 2-driver and owner of the crime vehicle was dismissed for default *vide* order of this Court on 01.07.2016. 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

¹ 2001(1) ALT 495 (D.B.)

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."

4. Respondent No.1 is the driver, Respondent No.2 is the owner and Respondent No.3 is the insurer of the crime vehicle but in the decree prepared by the Tribunal, mention of Respondent No.3 in the cause title is totally omitted, as such appropriate decree is required to be prepared by the Tribunal.

5. Learned standing counsel appearing for the 3rd respondent-insurer contended that the appellant had suffered only simple injuries. The Tribunal has taken all the heads of compensation into account and granted a just compensation of Rs.55,000/-. In the circumstances of this case, it is not appropriate for this Court to interfere with the order under Appeal.

6. In view of the contentions put forth by both counsel, the following point came up for determination:

Whether the appellant is entitled for enhancement of compensation?

7. **POINT:** As per the evidence on record, the appellant was a pillion rider on Suzuki Samurai Motorcycle bearing No.AP16P 5411, belonging to the 2nd respondent, driven by 1st respondent in a rash and negligent

manner on 30.10.2001 around 11:00 a.m., and suffered severe injuries due to the use of the motorcycle. On this score, there is a specific evidence of P.W.1. Ex.A-1 is the copy of F.I.R., Ex.A-2 is the wound certificate of the appellant; Ex.A-3 is the certified copy of charge sheet, which clinchingly establishes the rashness and negligence on the part of the driver of crime vehicle. The Tribunal has analyzed the entire evidence on this score and held that the appellant suffered injuries due to the rash and negligent driving of the driver of Suzuki motorcycle bearing No.AP16P 5411, being driven by 1st respondent, owned by 2nd respondent. No other opinion can be substituted.

8. P.W.1 - appellant, in his evidence, had clearly and categorically deposed that he suffered three grievous injuries and other injuries in the accident. Through his evidence Ex.A-1 to A-10 were marked. P.W.2 Dr. D. Venkatesh, also deposed about the appellant suffering three grievous injuries and taking treatment in his hospital and also spoke about the genuineness of Ex.A-2, wound certificate of the appellant, which reveals that the appellant suffered three severe injuries. P.W.2 further deposed that he conducted operation and also performed bone grafting from 11.06.2002 to 14.06.2002 at Royal Orthopedic Hospital. P.W.2 is the doctor and an independent person; there is nothing on record to disbelieve his evidence. As per the evidence of P.W.2, the appellant was treated for 5 days in N.C.H. and 4 days in R.O.H. Hospitals. While dealing with grant of compensation, the Tribunal has granted Rs.40,000/- towards pain and suffering; Rs.10,000/- towards medical expenses and a sum of Rs.5,000/- towards treatment of bone grafting charges. In all, the Tribunal granted a compensation of Rs.55,000/-.

9. It is evident from Ex.A-2 and the evidence of P.Ws.1 and 2 the appellant suffered three grievous injuries mentioned therein. Taking the

injuries into consideration, the appellant can be granted an amount of Rs.50,000/- for the grievous injuries, pain and suffering. P.W.1 deposed that he was aged 24 years old and working as a clerk in Medical shop but he did not produce any record in support of his submission. However, it can be safely concluded that the appellant is a working person; looking at the injuries, it can also be concluded that he was prevented from working for a period of three months and can be granted a compensation of Rs.12,000/- at the rate of Rs.4,000/- p.m. Ex.A-7 is the bunch of medical bills, 7 in number, wherein it is mentioned that an amount of Rs.25,981/- was spent by the appellant; Ex.A-8 is the bunch of medical bills, 12 in number, wherein it was mentioned that an amount of Rs.15,547/- was spent by the appellant. There is evidence of P.W.2, doctor, about the appellant taking treatment in the private hospital. The Tribunal while admitting the amount payable under these bills stated that the Corporate Hospitals are collecting huge amounts towards room rents and other expenses. So, the medical expenses incurred by the appellant but not proved by him cannot be reimbursed. P.W.2, doctor, had clearly deposed that the appellant has taken treatment in a private hospital. Therefore, the appellant can be granted the expenses covered under Exs.A-7 and A-8, which is an amount of Rs.41,000/-. So, the appellant is entitled for an amount of Rs.41,000/- towards medical expenses. In the circumstances, the appellant can be granted an amount of Rs.4,000/- towards expenses incurred to him for extra nourishment and transportation etc., In all the appellant is entitled for a compensation of Rs.1,07,000/-.

10. As seen from the evidence on record, the Suzuki Motorcycle bearing No.AP 16P 5411 is insured with the 3rd respondent. Though the copy of insurance policy was not filed either before the Tribunal or before this Court, there is no dispute with regard to the vehicle in question having

valid insurance with Respondent No.3, at the time of occurrence of accident. The finding of the Tribunal in tagging the liability against the 3rd respondent is not challenged by the 3rd respondent-insurer also. Therefore, it can safely be concluded that the crime vehicle is validly insured with the 3rd respondent-insurer, at the time of accident, and there was existence of valid insurance.

11. As per the evidence on record, there is no evidence of violation of any terms and conditions of the insurance policy by Respondents 1 and 2, the driver and owner of the crime vehicle. Hence, the Respondents 1 to 3 are jointly and severally liable to pay compensation to the appellant.

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

Sl.No.	Name of Head	Awarded by Tribunal	Modified by this Court
01.	Medical expenses	Rs.10,000/-	Rs.41,000/-
02.	Pain and suffering and grievous injuries	Rs.40,000/-	Rs.50,000/-
03.	Transportation and extra Nourishment	---	Rs.4,000/-
04.	Loss of earnings	---	Rs.12,000/-
05.	Bone grafting expenses	Rs.5,000/-	-----
TOTAL		55,000/-	Rs.1,07,000/-

13. Accordingly, the Appeal is allowed in part, enhancing the compensation awarded by the Tribunal from Rs.55,000/- to Rs.1,07,000/-, keeping intact the rate of interest of 7.5% p.a. awarded and other conditions imposed by the Tribunal as it is. The respondents 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.

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

Dr. SHAMEEM AKTHER, J

Date: 27.02.2017.
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275



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M.A.C.M.A. No. 1707 OF 2006

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