

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.381 OF 2007

JUDGMENT:

1. This Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), is preferred by the appellant, who is the petitioner-injured in O.P. No.177 of 2004, on the file of the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge (Fast Track Court), Anantapur (for short, 'the Tribunal'), having got dissatisfied with awarding compensation of Rs.2,04,600/-, against the original claim of Rs.4,00,000/-, with interest at 7.5% *per annum* from the date of petition till realisation making both the respondents jointly and severally liable to pay the same *vide* order of the Tribunal dated 07.12.2006, for the injuries sustained by him in a motor accident occurred on 21.01.2003.

2. Appellant herein is the petitioner-injured, 1st respondent herein is the owner of Jeep bearing registration No.AP-02V-4504 (for short, 'the crime vehicle') and the 2nd respondent herein is the insurer of the crime vehicle.

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

4. The case of the petitioner, in brief, is that on 21.10.2003, when he boarded an Auto bearing No.KA-11-3978 to proceed from Nallamada to Kondakamarla, and when the auto reached near Seshaiyahgaripalli village, the crime vehicle came in their opposite direction at high speed and the driver, having lost control over it, dashed against the auto, as a result of which the auto turned turtle and the petitioner received grievous crush injuries to his both legs. Immediately, he was shifted to Government General Hospital, Anantapur and from there to St. John's Medical College,

Bangalore; wherein, his left leg was amputated up to knee level and the right leg was about to amputation. For the injuries sustained by the petitioner, he incurred an amount of Rs.1,50,000/- towards medical expenses. Hence, the petitioner, who was hale and healthy and working as a Cleaner in a Van, earning Rs.3,000/- p.m., is not in a position to attend any works, claimed compensation of Rs.4,00,000/- against both the respondents.

5. Respondent No.1, owner of the crime vehicle, remained *ex parte* before the Tribunal.

6. Respondent No.2, insurer of the crime vehicle, filed counter denying the material allegations of the petition *inter-alia* contending that there is no rashness and negligence on the part of the driver of crime vehicle but the driver of the auto alone is responsible for the accident. It was further contended that the petitioner's working as Cleaner, earning Rs.3,000/- p.m., suffering amputation to his leg is not correct; further, the liability of this respondent is subject to the terms and conditions of the insurance policy 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 3 and R.W.1 and the documents Exs.A-1 to A-10, Exs.C-1 and C-2 and Ex.B-1, awarded the compensation of Rs.2,04,600/- (*i.e.*, Rs.1,84,572/- towards loss of future earnings, Rs.15,000/- towards medical expenses, transportation, attendant expenses and extra nourishment and Rs.5,000/- towards pain and suffering) 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. Heard the arguments of learned counsel for the appellant-petitioner. Sri T. Ramulu, learned counsel for the 2nd respondent-insurer, on record, submits that he has withdrawn his vakalath and returned the file to the Insurance Company long back.

9. There is no representation on behalf of the 2nd respondent-insurer today and also on the last date of occasion. Admittedly, when the file is taken by the Insurance Company, long back, it ought to have engaged another counsel and proceeded with hearing of the case. Since it has not done so, this Appeal can be decided on merits.

10. Further, 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 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."

¹ 2001(1) ALT 495 (D.B.)

11. Learned counsel appearing on behalf of the appellant-petitioner submits that the petitioner suffered grievous injuries in a motor accident occurred on 21.10.2003, due to rash and negligent driving of the driver of the crime vehicle. Consequently, he suffered amputation of his left leg below the knee. The Tribunal has granted a compensation of Rs.2,04,600/- against the original claim of Rs.4,00,000/-, which is quite meager and unjust. The appellant has proved the rashness and negligence on the part of the driver of crime vehicle and also valid insurance in respect of the crime vehicle. The petitioner is entitled for compensation as prayed for and, ultimately, prayed to enhance the compensation.

12. In view of the submissions made on behalf of the appellant-petitioner and a perusal of the material available on record, the point for determination is whether the appellant is entitled for enhancement of compensation amount?

13. **POINT:** There is specific evidence of P.W.1 that he suffered injuries due to the rash and negligent driving of the driver of the crime vehicle; the documents marked as Ex.A-1, certified copy of F.I.R., Ex.A-2, certified copy of charge sheet, and Ex.A-3, certified copy of wound certificate, reveal the same. Nothing is rebutted by the respondents. The Tribunal has recorded reasons and held that the petitioner suffered grievous injuries and suffered amputation due to rash and negligent driving of the driver of crime vehicle. This finding is based on record. There is nothing to take a different view.

14. As seen from the evidence of P.W.1 and the document Ex.B-1, copy of insurance policy, the crime vehicle was validly insured with the 2nd respondent as on the date of accident. There is no evidence in violation of

any of the terms and conditions of the policy. Therefore, tagging of joint liability against the 1st respondent-owner and the 2nd respondent-insurer of the crime vehicle cannot be disturbed.

15. The evidence of P.W.1 reveals registration of Crime No.46 of 2003 on 21.10.2003 and the petitioner suffering grievous injuries all over the body and due to the injuries his left leg below the knee was amputated. The documents marked as Ex.A-3, certified copy of wound certificate, and Ex.A-9, disability certificate, reveals the same. The Tribunal has also recorded that the petitioner suffered amputation of his left leg below the knee. This finding is based on record and it cannot be disturbed.

16. While dealing with the award of compensation on different scores, the Tribunal has granted an amount of Rs.1,84,572/- towards loss of earnings by taking the age of the petitioner as 28 years, applied multiplier 17.09, took his monthly income as Rs.1,500/- and the disability at 60%, Rs.15,000/- towards medical expenses, attendant expenses and transportation taking into consideration only Ex.A-5, medical bills, and Ex.A-6 - tickets, and Rs.5,000/- towards pain and suffering; in all, awarded an amount of Rs.2,04,600/-.

17. As per the record, the appellant-petitioner is working as Cleaner. It is evident from the record that the petitioner is aged 28 years but he has not produced any document to prove that he was a cleaner, however, in the circumstances, it may be taken that he was an earning member, his income can be taken as Rs.2,200/- p.m. instead of Rs.1,500/- p.m., as taken by the Tribunal. Therefore, the amount of compensation to be awarded under the head of loss of earnings would come to Rs.2,200/- x 12 x 17 x 60/100 = Rs.2,69,280/- which is rounded off to Rs.2,69,000/-. Thus, the appellant-petitioner is entitled for an amount of Rs.2,69,000/-

towards loss of earnings, instead of Rs.1,84,572/- as granted by the Tribunal, as there is clear evidence in Ex.A-3 – wound certificate and Ex.A-9 – disability certificate that the petitioner suffered 60% disability. So, in case of amputation of left leg below the knee, such percentage of disability is quite possible. The Tribunal has granted Rs.15,000/- towards medical expenses and Rs.5,000/- towards pain and suffering, which finding is not required to be disturbed.

18. 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.	Loss of earnings	Rs.1,84,572/-	Rs.2,69,000/-
02.	Medical & attendant expenses, transportation & extra nourishment	Rs.15,000/-	Rs.15,000/-
03.	Pain and suffering	Rs.5,000/-	Rs.5,000/-
TOTAL		Rs.2,04,600/-	Rs.2,89,000/-

19. Accordingly, the Appeal is allowed in part, enhancing the compensation awarded by the Tribunal from Rs.2,04,600/- to Rs.2,89,000/-, keeping in tact the rate of interest awarded by the Tribunal as 7.5% p.a. payable from the date of petition till the date of realization. On deposit, the appellant-petitioner is permitted to withdraw the entire amount. The other conditions imposed by the Tribunal remain unaltered.

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

Dr. SHAMEEM AKTHER, J

Date: 16.06.2017.
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