

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.1119 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.2449 of 2004, on the file of the Chairman, Motor Accidents Claims Tribunal-cum-XIV Additional Chief Judge, City Civil Court (Fast Track Court) at Hyderabad (for short, 'the Tribunal'), having got dissatisfied with awarding compensation of Rs.3,83,000/-, against the original claim of Rs.4,50,000/-, being payable by both the respondents jointly and severally, with interest at 7.5% *per annum* from 22.06.2006 till realisation, *vide* the order of the Tribunal dated 22.11.2006.

2. Appellant herein is the petitioner-injured, 1st respondent herein is the owner of Auto Trolley bearing registration No.AP-13W-6905 (for short, 'the crime vehicle') and the 2nd respondent herein is the insurer of the crime vehicle.

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

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

5. The case of the petitioner, in brief, is that on 05.04.2004 at about 07-45 a.m., when the petitioner, along with his friends Srinu, Maruthi Rao and Ravi, was travelling by an Auto rickshaw bearing registration No.AP-13V-7621 (for short, 'the auto') from Warangal to Narayankhed and when the auto reached the limits of Hokrana village, the crime vehicle came in their opposite direction and dashed against the auto by which the

petitioner was travelling. As a result of which, the petitioner and his friends fell down and received several injuries. The petitioner suffered compound fractures of both bones in right leg, closed commuted fracture of femur and fracture of NOF (right). Subsequently, the petitioner underwent major operation and his right leg was amputated up to knee level. The Station House Officer, Narayankhed registered a case in Crime No.43 of 2004 for the offence under Section 338 I.P.C. against the driver of crime vehicle. Prior to the accident, the petitioner was aged 25 years, hale and healthy, and used to earn Rs.6,000/- p.m. but due to the accident, the petitioner is not in a position to attend his works and suffered mental agony. Claimed compensation of Rs.4,50,000/- against both the respondents, who are owner and insurer of crime vehicle.

6. 1st respondent remained *ex parte* before the Tribunal.

7. 2nd respondent, insurer of the crime vehicle, filed counter and additional counter denying the material allegations of the petition *inter-alia* contending that there is no rash and negligence on the part of the driver of crime vehicle and the accident occurred only due to the rash and negligent driving of the driver of auto, by which the petitioner was travelling, who only possessed learners license bearing No.2471/2003 dated 13.02.2003 to 12.08.2003, and as such the owner and insurer of auto by which the petitioner travelled have to be impleaded as proper and necessary parties to this petition; otherwise, this petition is not maintainable. Further contended that the compensation claimed by the petitioner is excessive and exorbitant and sought for dismissal of the petition.

8. The Tribunal, after framing issues and, considering the evidence of P.Ws.1 to 4 and the documents Exs.A-1 to A-12 and Ex.B-1, awarded the compensation of Rs.3,83,000/- (*i.e.*, Rs.15,000/- towards loss of earnings,

Rs.20,000/- towards extra nourishment and medicines, Rs.1,000/- towards loss of wrist watch, Rs.2,000/- towards transportation expenses, Rs.15,000/- towards attendant charges, Rs.20,000/- towards pain and suffering and Rs.3,10,000/- towards future loss of earnings) with interest at the rate of 7.5% *per annum* from 22.06.2006 till realisation, making both the respondents jointly and severally liable to pay the compensation.

9. The appeal against the 1st respondent-owner of the crime vehicle was dismissed for default on 08.07.2016. 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 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. While dealing with the subject matter of the Appeal, the Tribunal had framed the following issues:

¹ 2001(1) ALT 495 (D.B.)

1. Whether the accident resulting in injuries to the petitioner occurred due to rash and negligent driving of the driver of the auto bearing No.AP 13W 6905?
2. Whether the petitioner is entitled for compensation, if so, to what amount and from whom?
3. To what relief?

11. After analyzing the entire evidence on record *i.e.*, the evidence of P.Ws.1 to 4 and the documents marked, Ex.A-1 – certified copy of F.I.R., Ex.A-2 – certified copy of charge sheet, Ex.A-3 – certificated copy of Panchanama, Ex.A-4 – certified copy of wound certificate, Ex.A-5 – hospital treatment certificate in original dated 16.09.2004, Ex.A-6 – discharge card of Sri Vijaya Hospitals, Ex.A-7 – certificate issued by Sri Vijaya Hospitals, dated 12.01.2005, Ex.A-8 – disability certificate issued by Medical Board, Ex.A-9 - bunch of medical bills, Ex.A-10 – prescription issued by Sri Vijaya Hospitals, Ex.A-11 – medical bill, Ex.A-12 – positive photograph of the petitioner and Ex.B-1 copy of insurance policy, the Tribunal held that there was rash and negligence on the part of the driver of crime vehicle and there was valid insurance with the 2nd respondent, and there is no violation of terms and conditions of the insurance policy, awarded a compensation of Rs.3,83,000/-, detailed below, with interest at the rate of 7.5% p.a. from the date of filing of the O.P. till realization.

Sl. No.	Name of the Head	Amount of compensation
1.	Loss of earnings	Rs.15,000/-
2.	Extra Nourishment and medicines	Rs.20,000/-
3.	Loss of wrist watch	Rs.1,000/-
4.	Transportation expenses	Rs.2,000/-
5.	Attendant charges	Rs.15,000/-
6.	Pain and suffering	Rs.20,000/-
7.	Future loss of earnings	Rs.3,10,000/-
TOTAL		Rs.3,83,000/-

12. There is ample evidence on record to believe that there was rash and negligence on the part of the driver of crime vehicle and there is also evidence to believe that the crime vehicle was validly insured with the 2nd respondent and there was no violation of terms and conditions of the insurance policy. The contention of the 2nd respondent that the owner and insurer of the auto rickshaw, by which the petitioner was traveling, are necessary parties is untenable; there is no substance in the contention and the same is rejected.

13. The point for determination is whether the appellant is entitled for enhancement of compensation?

14. **POINT:** The evidence placed on record clearly establishes that there was amputation of right leg of the petitioner up to knee level. There is unimpeachable evidence of P.W.2, doctor, on this aspect and the same is fortified by the medical record and criminal case record produced before the Tribunal. There is nothing to disbelieve that the petitioner did not suffer the injuries as mentioned in Ex.A-4 - wound certificate. While determining the compensation and tagging the liability against the respondents, in this case, the Tribunal has relied on the following decisions:

1. M. Yadagiri Reddy @ M. Yadi Reddy Vs. K. Rama and another {2005 (2) ALD 459},
2. Iranna Vs. Mohammadali Khadarsab Mulla and another {2005 (2) ACC 150 (DB)},
3. Kesarimal Vs. United India Insurance Company Limited and others {2004 (1) ACC 66},
4. Ram Singh Vs. Rajmal and others {2004 (1) ACC 697},
5. Bhaskar @ Bhaskar Devar Bangad Vs. R.K. Srinivasan and another {2001 ACJ 383},

6. Suresh Bacha Pujari Vs. Bandu S. Chougala and others

{2005 (2) ACC 649} and

7. United India Insurance Company Limited Vs. K. Anjaiah

and others {2004 (4) ALD 444}.

15. Learned counsel for the appellant-petitioner has relied on a Division Bench decision of the Supreme Court in ***Mithusinh Pannasingh Chauhan Vs. Gujarat State Road Transport Corporation and another***² to contend that the Supreme Court has granted a compensation of Rs.4,00,000/- with interest at the rate of 6% p.a. for 50% disability suffered by the petitioner therein, and a decision of the Karnataka High Court in ***Suresh Bacha Pujari Vs. Bandu S. Chougala***³ to contend that the Karnataka High Court had granted a compensation of Rs.4,20,000/- for amputation of entire right leg of the petitioner therein and an amount of Rs.50,000/- was granted towards pain and suffering. Similar injuries were suffered by the petitioner herein as well as the petitioner in ***Suresh Bacha***³, the petitioner in the case on hand was granted Rs.20,000/- towards pain and suffering. The petitioner herein suffered amputation, fractures and other injuries, grant of Rs.20,000/- towards pain and suffering is on lower side, therefore, it is enhanced to Rs.50,000/-. As far as grant of compensation on other grounds, such as Rs.15,000/- towards loss of earnings, Rs.20,000/- towards extra nourishment and medicines, Rs.1,000/- towards loss of wrist watch, Rs.2,000/- towards transportation expenses, Rs.15,000/- towards attendant charges and Rs.3,10,000/- towards future loss of earnings, are concerned, they were awarded basing on the oral and documentary evidence placed on record; there are no justifiable grounds to enhance the same. Accordingly, the compensation payable to the appellant-petitioner is enhanced to Rs.4,13,000/- from

² 2015 LS (SC) 872

³ 2004 LS (Karnataka) 458

Rs.3,83,000/- with interest at the rate of 7.5% p.a. from the date of filing of the petition till the date of realization. On deposit, the appellant-petitioner is permitted to withdraw half of the compensation awarded in this case and the remaining half is directed to be invested in Fixed Deposit Receipts for a period of three (3) years. After completion of the said period, the appellant-petitioner is entitled to withdraw the same. The other conditions imposed by the Tribunal are un-changed.

16. Accordingly, the Appeal is allowed in part. No order as to costs.

17. As a sequel, pending miscellaneous petitions, if any, shall stand closed.

Date: 21.07.2017.
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Dr. SHAMEEM AKTHER, J



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