

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.1473 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 in O.P. No.203 of 2002 on the file of the Chairperson, Motor Accidents Claims Tribunal-cum-IV Additional District Judge (Fast Track Court), Mahabubnagar (for short, 'the Tribunal'), having got dissatisfied with awarding compensation of Rs.59,000/-, against the original claim of Rs.2,50,000/-, in directing the 2nd respondent-insurer to first pay the compensation and, later, recover it from the 1st respondent-owner, with interest at 7.5% *per annum* from the date of petition till realisation, *vide* order of the Tribunal dated 08.11.2006, for the injuries sustained by him in a motor accident occurred on 08.12.2001.

2. Heard the learned counsel for the appellant-petitioner and perused the record. The appeal against the 1st respondent-owner of the crime vehicle was dismissed for default on 08.07.2016. In spite of service of notice on the 2nd respondent-insurer, none entered appearance and there is no representation on its behalf.

3. Appellant herein is the petitioner-injured, 1st respondent herein is the owner of Auto registration No.AP-22T-9483 (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 08.12.2001 at about 12-10 p.m., when the petitioner, along with the spare parts purchased at Mahabubnagar for his saw mill, boarded the crime vehicle and when the

crime vehicle reached near Mayuri Nursery on Mahabubnagar – Jadcherla road, the driver of the crime vehicle drove the same at high speed, in a rash and negligent manner, unable to control, the crime vehicle went off the road and turned turtle. As a result of which, the petitioner sustained multiple injuries all over his body and was shifted to Government Hospital, Mahabubnagar and, on the same day, he was referred to Osmania General Hospital, Hyderabad; where he took treatment as inpatient till 13.02.2002, his both legs were operated and steel rods were inserted in his legs; the petitioner incurred a sum of Rs.1,00,000/- towards treatment, sustained permanent disability and suffered mental pain. Immediately after the accident, Mahabubnagar (Rural) P.S. registered a case in Crime No.214 of 2001 for the offence under Section 338 of I.P.C. The petitioner was hale and healthy, aged 19 years, running saw mill and earning an amount of Rs.10,000/- p.m. prior to the accident, hence, claimed the aforesaid compensation against both the respondents.

6. Respondent No.1-owner of the crime vehicle remained *ex parte*.

7. Respondent No.2-insurer of the crime vehicle filed counter denying the material allegations of the petition *inter-alia* contending that the age, income and manner of accident be put to strict proof of the same. It was further contended that the driver of crime vehicle has no valid and effective driving license and as such the crime vehicle was not insured with the 2nd respondent on the date of accident and as such the 2nd respondent-insurer is not liable to pay the compensation and sought for dismissal of the Petition.

8. The Tribunal, after framing issues and, considering the evidence of P.W.1, R.W.1 and the documents Exs.A.1 to A.10 and Exs.B-1 and B-2, awarded compensation of Rs.59,000/- (*i.e.*, Rs.20,000/- towards pain and

suffering, Rs.2,000/- towards transportation, Rs.3,000/- towards extra nourishment, Rs.24,000/- towards medical expenses and treatment and Rs.10,000/- towards loss of earnings) with interest at the rate of 7.5% per annum from the date of petition till realisation, directed the 2nd respondent-insurer to honour the same and, later, recover the same from the 1st respondent-owner of the crime vehicle, without filing any suit.

9. Learned counsel for the appellant-petitioner submits that the Tribunal, in all, has granted a compensation of Rs.59,000/- against the original claim of Rs.2,50,000/- in respect of injuries suffered by the petitioner in a motor accident. Though the petitioner suffered eight injuries, out of which three are grievous and other injuries are simple in nature; the petitioner was hospitalized and underwent treatment as in-patient for 66 days in Osmania General Hospital, Hyderabad but the Tribunal has granted only Rs.20,000/- towards pain and suffering and Rs.10,000/- towards loss of earnings and also granted meager compensation on other scores and, ultimately, prayed to enhance the compensation, as prayed for.

10. The evidence of P.W.1, petitioner – injured, reveals that he suffered grievous and simple injuries as mentioned in Ex.A-3 - wound certificate and Ex.A-4 – discharge summary of the petitioner. Ex.A-3 clearly reveals that the petitioner suffered three grievous injuries to the right thigh, left thigh and bilateral fracture to the shaft femur and four simple injuries over right side of face, elbow and upper eye-lid and on the back portion and an abrasion over left side of face and, as per Ex.A-4, the petitioner was admitted in the Osmania General Hospital on 08.12.2001 and got discharged on 13.02.2002; he suffered fracture of shaft femur and has undergone two surgeries on 08.01.2002 and 29.01.2002, respectively. Both these documents were issued by the competent doctors. The other

documents such as Ex.A-1 – copy of F.I.R. and Ex.A-2 - charge sheet reveal that there was rash and negligence on the part of the driver of crime vehicle. There is also evidence to prove that the crime vehicle was validly insured with the 2nd respondent on the date of accident under the original of Ex.B-1 and the driver was holding license under the original of Ex.B-2. Hence, the Tribunal held that there was rashness and negligence on the part of the driver of crime vehicle. Further, the Tribunal referring to Ex.B-2, driving license extract of the driver of crime vehicle, concluded that it is only a light motor vehicle (non-transport) driving license valid to drive from 14.12.2001 but the accident had taken place on 08.12.2001 and referring to the decision of the Apex Court in ***National Insurance Company Limited Vs. Swaran Singh and others***¹, held that due to breach or violation of policy conditions, the 2nd respondent-insurer cannot avoid its liability to pay compensation; it has to first pay the compensation to the petitioner and, later, has to recover it from the 1st respondent-owner. This finding of the Tribunal is based on record and no interference is warranted.

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

12. **POINT:** As discussed above, the evidence of P.W.1 and the documents marked under the original of Exs.A-3 and A-4, wound certificate and discharge summary, establishes that the petitioner suffered the aforesaid injuries; there is nothing to disbelieve the same. It is also on record that the petitioner was admitted in the Osmania General Hospital, Hyderabad on 08.12.2001 and discharged on 13.02.2002. Though the petitioner has suffered eight injuries, the Tribunal has granted only Rs.20,000/- towards pain and suffering; considering the nature of injuries

¹ 2004 (1) ACJ I

and the period of treatment he has undergone, it is enhanced to Rs.70,000/- from Rs.20,000/-. The Tribunal has granted Rs.10,000/- towards loss of earnings; there is record to show that the petitioner was working in saw mill and his earning can be taken as Rs.2,000/- p.m. Since the petitioner suffered fractures to his both legs, it can safely be concluded that he did not work for 15 months and an amount of Rs.30,000/- is awarded towards loss of earnings instead of Rs.10,000/-. The Tribunal has granted Rs.2,000/- towards transportation and Rs.3,000/- towards extra nourishment; considering the nature of injuries and the disability suffered by the petitioner, they are enhanced to Rs.10,000/- on each score. As per the record, no attendant charges were paid to the petitioner, though he has suffered three grievous injuries, has undergone two operations and was inpatient for more than 60 days; hence, an amount of Rs.24,000/- is awarded towards attendant charges for keeping one attendant for one year at the rate of Rs.2,000/- p.m. As far as grant of compensation of Rs.24,000/- towards medical expenses is concerned, the Tribunal has arrived at a just conclusion, there is nothing to interfere with the said finding.

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

Sl.No.	Name of Head	Awarded by Tribunal	Modified by this Court, if any
01.	Pain and suffering	Rs.20,000/-	Rs.70,000/-
02.	Transportation	Rs.2,000/-	Rs.10,000/-
03.	Extra nourishment	Rs.3,000/-	Rs.10,000/-
04.	Medical expenses	Rs.24,000/-	Rs.24,000/-
05.	Attendant charges	---	Rs.24,000/-
06.	Loss of earnings	Rs.10,000/-	Rs.30,000/-
TOTAL		59,000/-	Rs.1,68,000/-

14. Accordingly, the Appeal is allowed in part, enhancing the compensation awarded by the Tribunal from Rs.59,000/- to Rs.1,68,000/- with interest at the rate of 7.5% p.a. from the date of filing of petition till realization. On depositing compensation amount, the appellant-petitioner is permitted to withdraw the entire compensation amount. The other conditions, including pay and recover, imposed by the Tribunal remain unchanged.

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

Date: 26.07.2017.
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Dr. SHAMEEM AKTHER, J



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