

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No. 445 OF 2006

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), by the appellant-petitioner in O.P. No.846 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Ranga Reddy District (for short, 'the Tribunal'), having got dissatisfied with the award of compensation of Rs.94,000/- with interest at 9% per annum from the date of petition till realisation, vide the order dated 10.11.2005, as against the claim of Rs.1,50,000/-, for the injuries sustained by him in a road accident occurred on 22.05.2001.

2. The record reveals that on 22.05.2001 at about 6-00 a.m., while the appellant-petitioner was proceeding on his scooter bearing registration No.AP 11H 2439 from NTR Nagar to Shamshabad, when he reached near Ganganpahad, a lorry bearing registration No.ABK 7025, driven by its driver in a rash and negligent manner at high speed, came in opposite direction on the wrong side of the road and dashed the scooter and due to which, the appellant sustained grievous injuries all over his body and his scooter was damaged; immediately, he was admitted in Osmania General Hospital and thereafter, he was shifted to M/s. Sai Sanjeevini Hospital, Dilsukhnagar, where he was treated from 22.05.2001 to 14.06.2001 and spent Rs.50,000/- on treatment. The appellant-petitioner stated that he used to earn Rs.5,000/- to Rs.6,000/- per month by distributing biscuit packets and chocolate packets to retailers and also Rs.1,500/- per month as commission from Dishnet computer internet and due to the accident, he became disabled permanently and unable to work regularly. Hence, he claimed of Rs.1,50,000/- towards compensation from respondent Nos.1 and 2, who are the owner and insurer of the offending lorry.

3. Respondent No.1-owner of the offending lorry remained *ex parte* before the Tribunal. Respondent No.2-insurer of the lorry filed counter denying all the averments mentioned in the petition and contended that the claim of compensation is excessive and exorbitant and that the driver of the lorry had no valid driving licence at the time of accident and it is not liable to pay any compensation to the appellant-petitioner and finally, prayed to dismiss the claim petition.

4. The Tribunal, after framing three issues and considering the evidence of P.Ws.1 and 2 and Exs.A.1 to A.8, awarded compensation of Rs.94,000/- with interest at 9% per annum from the date of petition till realisation, in favour of the appellant-petitioner against respondent Nos.1 and 2. Challenging the said award, the appellant-petitioner preferred the present appeal seeking enhancement of compensation.

5. Heard both the learned counsel for the appellant-petitioner and the learned Standing Counsel for respondent No.2-insurer, apart from perusing the material available on record. The appeal against respondent No.1-owner is dismissed on 14.07.2016 for default. However, dismissal of the appeal for default against respondent No.1-owner of the vehicle is of no consequence to decide the quantum of compensation, in view of the decision of a Division Bench of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others**¹, wherein it is held that:

"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

¹ 2001(1) ALT 495 (D.B.)

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."

6. The contention of the learned counsel for the appellant-petitioner is that the Tribunal, without considering the evidence on record, more particularly, the evidence of P.W.2-doctor and Ex.A.6-medical bill, granted meagre amount towards compensation; the Tribunal failed to appreciate Ex.A.8-X-ray report, which clearly shows that the appellant-petitioner sustained a fracture; and finally, prayed to enhance the compensation.

7. On the other hand, learned Standing Counsel for respondent No.2-insurer contended that the Tribunal has rightly granted just and adequate compensation to the appellant-petitioner; there are no mitigating circumstances to enhance the compensation; and finally, prayed to dismiss the appeal.

8. Perused the order under appeal and the evidence on record. The manner in which the accident had taken place is not in dispute. The liability fastened by the Tribunal on both the respondents is also not in dispute. Now, the only short question is, whether the appellant-petitioner is entitled for enhancement of compensation?

9. Ex.A.6 is the medical bill dated 15.06.2001, issued by Sri Sai Sanjeevini Hospital, Dilsukhnagar, it exhibits the bill towards admission fee, operation theatre expenses, operation charges, operation medicines, etc., for

an amount of Rs.35,300/- and the said amount was collected from the appellant-petitioner. The Tribunal, while determining the compensation, did not say why the amount covered by Ex.A.6 is not granted. Therefore, in addition to the amount of Rs.94,000/- awarded by the Tribunal under various heads, the appellant-petitioner is also entitled to Rs.35,300/- towards medical expenses covered under Ex.A.6. Thus, the appellant-petitioner is entitled to a total sum of Rs.1,29,300/-.

10. So far as the rate of interest is concerned, the Tribunal granted interest at the rate of 9% per annum from the date of petition till realization and the same is reduced to 7.5% per annum as per the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**².

11. Accordingly, this appeal is partly allowed modifying the impugned order dated 10.11.2005 passed by the Tribunal, enhancing the compensation from Rs.94,000/- to Rs.1,29,300/- with interest at the rate of 7.5% per annum from the date of petition till realisation. The appellant-petitioner is permitted to withdraw the entire amount of compensation. The other terms of the order under challenge remain unchanged.

12. Miscellaneous Petitions pending, if any, shall stand closed. No order as to costs.

Dr. SHAMEEM AKTHER, J

Date: 10.03.2017

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² 2013 ACJ 1403