

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.1330 OF 2006

JUDGMENT:

1. This Appeal is preferred against the order, dated 27.04.2006, in O.P. No.1246 of 2003 on the file the Chairman, Motor Accidents Claims Tribunal-cum-IV Additional Metropolitan Sessions Judge-cum-XVIII Additional Chief Judge, Hyderabad (for short, 'the Tribunal'), wherein the Tribunal awarded a compensation of Rs.27,500/- against the original claim of Rs.1,00,000/-.

2. Appellant herein is the petitioner-injured, 1st respondent herein is the owner and 2nd respondent herein is the insurer of the Mahendra Bolero Jeep bearing No.AP-13E-9117 (For short, 'the crime vehicle'), who filed a petition before the Tribunal, under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), claiming compensation of Rs.1,00,000/- on account of the injuries sustained by him in a motor vehicle accident occurred on 18.04.2003.

3. The brief facts of the petition are that, on 18.04.2003, at about 11:45 a.m., while the appellant and his friend, Syed Shabbir Ali, boarded an Auto bearing No.AP-13-W-1745 at Necklace Road, to go to Noorkhan Bazaar, and when the said auto reached near old P.C.R. Cross Road, the crime vehicle came in their opposite direction, at a high speed, in a rash and negligent manner; and dashed against the auto. As a result of which, the auto fell down, the driver and others in the auto sustained injuries. The appellant sustained fracture to left side of clavicle bone and several injuries on his body. Immediately, he was shifted to Osmania General Hospital, got treated there till 19.04.2003 and, later, for better treatment

moved to a private Hospital and incurred medical expenditure. He filed the petition seeking compensation of Rs.1,00,000/-.

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

5. Respondent No.2, insurer of the crime vehicle, filed counter denying the claim of the appellant and contended that the monthly income of the appellant be put to strict proof and as such there is no negligence on the part of the driver of crime vehicle and contended that the auto driver has no valid license and as such he was not made a party to the petition and as such the petition is bad for non-joinder of necessary party and finally contended that the compensation claimed by the appellant is excessive, exorbitant and prayed for dismissal of the petition.

6. The Tribunal, after framing the issues and, on consideration of the pleadings and evidence of the witnesses P.Ws.1 and 2 and the documents Exs.A-1 to A-8 and Ex.B-1, granted compensation of Rs.27,500/- with proportionate costs and interest at the rate of 7.5% p.a. from the date of petition till realization making respondents Nos.1 and 2 jointly and severally liable to pay the compensation.

7. Being aggrieved by the quantum of compensation, the appellant preferred this Appeal seeking enhancement of the compensation.

8. Heard the arguments of Mr. T.D. Pani Kumar, learned counsel for the appellant and Mr. Kota Subba Rao, learned standing counsel for the 2nd respondent-insurance company.

9. The appeal against the respondent No.1 - owner of the crime vehicle, was dismissed for default *vide* order of this Court on 28.06.2016. However, dismissal of the appeal for default against him 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."

10. Learned counsel for the appellant submits that the Tribunal has granted a total compensation of Rs.27,500/-, under all heads, even though there is a specific mention under Ex.A-8 that the appellant suffered 10% disability, no amount is granted on this score; the amount granted under other heads is also very meager and prayed to enhance the same as claimed in the petition.

11. On the other hand, learned standing counsel for the 2nd respondent-insurer, contended the Tribunal has granted a reasonable compensation to the appellant, on all scores, as per the material available on record and, hence, no interference is warranted by this Court.

12. In view of the submissions put forth by the learned counsel for both the parties, the sole point came up for determination is:

¹ 2001(1) ALT 495 (D.B.)

Whether the appellant is entitled for enhancement of compensation?

13. **POINT:** As seen from the impugned order, it is clear that the appellant was granted a total compensation of Rs.27,500/- against his claim of Rs.1,00,000/-. The Tribunal had analyzed the entire evidence of P.Ws.1 and 2 and the documents Exs.A-1 to A-8 and Ex.B-1 and determined the compensation of Rs.27,500/- payable to the appellant by the respondents 1 and 2 jointly and severally, with accrued interest at the rate of 7.5% p.a. from the date of petition till realization.

14. As per the evidence of P.Ws.1 and 2 and the document Ex.A-8 - disability certificate of the appellant, there is a specific mention that the percentage of disability and loss of earning capacity was evaluated at 10%. In this case, P.W.2 is the doctor who had also deposed about the appellant suffering injuries etc., P.W.2 is also an Orthopaedic Professor, who clearly deposed in his evidence that the appellant suffered 10% permanent disability i.e., cannot lift heavy weights etc., In the certificate given by the Medical Board of Osmania General Hospital, Hyderabad, there is no mention of permanent disability as deposed by P.W.2. However, since there is 10% functional disability suffered by the appellant in the motor vehicle accident, on this score alone the appellant is entitled for enhancement of compensation of Rs.10,000/- only. On all other aspects, the amount determined by the Tribunal is retained. There is no much contest with regard to the rashness and negligence and the validity of insurance policy of the crime vehicle in this case.

15. In the result, the Appeal is allowed in part, enhancing the compensation awarded by the Tribunal from Rs.27,500/- to Rs.37,500/-, 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 and 2 are jointly and severally liable to pay the compensation. After depositing the compensation amount, the appellant is permitted to withdraw the entire compensation amount.

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

Dr. SHAMEEM AKTHER, J

Date: 17.02.2017.
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