

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. Nos.485 OF 2006 & 879 OF 2011

COMMON JUDGMENT:

1. Both these Appeals arose out of the orders dated 26.09.2003 passed in O.P. Nos.1230 and 1229 of 2001 on the file of the Chairman, Motor Vehicle Accidents Claims Tribunal-cum-District Judge, Nalgonda (for short, 'the Tribunal').

2. M.A.C.M.A. No.485 of 2006 (former appeal) is preferred by the appellant-petitioner, who was examined as P.W.5, having got dissatisfied with the award of compensation of Rs.27,601/-, as against Rs.1,00,000/-, with proportionate costs and future interest at 9% per annum from the date of petition till realisation, by the Tribunal, in O.P. No.1230 of 2001, filed under Section 166 read with section 140 of the Motor Vehicles Act, 1988 (for short, 'the Act') against respondent Nos.1 and 2, who are the owner and insurer of the tractor and trailer bearing registration Nos.AP-24-T-8034 and AP-24-T-8035 (for short, 'the crime vehicle'), for the injuries sustained by him in a motor accident.

3. Whereas, M.A.C.M.A. No.879 of 2011 (latter appeal) is preferred by the appellant-petitioner, who was examined as P.W.4, having got dissatisfied with the award of compensation of Rs.40,401/-, as against Rs.1,00,000/-, with proportionate costs and future interest at 9% per annum from the date of petition till realisation, by the Tribunal, in O.P. No.1229 of 2001, filed under Section 166 read with section 140 of the Act against the same respondents, for the injuries sustained by him in the same accident.

4. The case of the appellants, in brief, is that on 25.08.2001 at about 11:30 a.m. while they were traveling by the jeep bearing No.AP-24-965 from Tripuraram to Miryalaguda and, at about 12:00 noon, when the jeep reached Thungapadu bus stage, the crime vehicle belonging to 1st respondent, came in their opposite direction at high speed in a rash and negligent manner and dashed their jeep; due to which, the appellants herein and other inmates of the jeep suffered grievous injuries. The accident occurred due to the rash and negligent driving of the driver of the crime vehicle; there was no negligence on the part of the driver of jeep, by which they were traveling and hence, they claimed the compensation from both the respondents.

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

6. Respondent No.2, insurer of the crime vehicle, filed counter denying the material allegations of the petition *inter-alia* contending that there was no negligence on the part of the driver of crime vehicle and the driver of the jeep was at fault and the compensation claimed by the petitioners is highly excessive, exorbitant and prayed to dismiss the petitions.

7. The Tribunal, after framing the issues and, considering the evidence of P.Ws.1 to 10 and the documents Exs.A.1 to A.24 and Ex.B.1- copy of insurance policy, which was marked on behalf of 2nd respondent-insurer on consent, in all the batch of petitions, determined the compensation as Rs.27,601/- to the petitioner (P.W.5) in O.P. No.1230 of 2001 (in former appeal) and Rs.40,401/- to the petitioner (P.W.4) in O.P. No.1229 of 2001 (in latter appeal) granted the same with interest at 9% per annum from the date of petition till realisation, fixing liability on both the respondents.

8. Heard the arguments of learned counsel for the appellant-petitioner and the learned Standing Counsel for 2nd respondent-insurer, in both the Appeals.

9. The Appeals against 1st respondent, owner of crime vehicle, were dismissed for default *vide* order of this Court on 22.04.2016 and 25.01.2010. However, dismissal of the Appeals for default against the 1st respondent-owner of the crime 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 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-petitioner, in both the Appeals, submitted that the appellants have led substantial evidence to prove their claim by marking Exs.A-14 to A-17 *i.e.*, certified copies of wound certificates and bunch of medical bills, showing the expenses incurred by each of them. But, the Tribunal has granted only a meagre compensation

¹ 2001(1) ALT 495 (D.B.)

though they suffered grievous and simple injuries and, ultimately, prayed to enhance the compensation in both the Appeals.

11. Learned standing counsel for the 2nd respondent-insurer, in both the Appeals, contended that the Tribunal had taken all the facts and circumstances into consideration and granted just and reasonable compensation to both the appellants; all the medical expenses were granted including granting compensation under the head of pain and suffering. Though, no document is filed to grant the amount under the heads of transportation, extra nourishment and loss of earnings, the Tribunal had considered the same and granted adequate compensation under those heads and there is nothing to enhance the compensation and, there was no rashness and negligence on the part of the driver of crime vehicle, prayed to dismiss the Appeals with costs.

12. In view of the rival contentions, the points that arise for determination in these Appeals are:

- 1) Whether the accident occurred only due to the rash and negligent driving of the driver of the tractor and trailer bearing Nos.AP-24-T-8034 and 8035?
- 2) Whether the appellants are entitled for enhancement of compensation?

13. **POINT No.1:** The appellants herein deposed as P.Ws.4 and 5 before the Tribunal. Their evidence reveals that on 25.08.2001, while they along with others were proceeding by the jeep, from Tripuraram to Miryalaguda around 12:00 noon, and when the jeep reached near Thungapadu bus stage, the crime vehicle came in their opposite direction, being driven by its driver, who is employee of the 1st respondent, at high

speed, in a rash and negligent manner, and dashed their jeep; due to which, P.W.4, appellant in latter Appeal, suffered fractures in the right fore-arm and in the left elbow, and P.W.5, appellant in former Appeal, suffered grievous injuries *i.e.*, fracture in his left fore-arm and fractures in 5th to 9th ribs on the right, along with other inmates of the jeep, who suffered injuries, were hospitalized and took treatment. In cross-examination, P.Ws.4 and 5, who are the appellants, herein reiterated the same. Altogether a batch of seven Original Petitions were disposed by the impugned order dated 26.09.2003, wherein ten witnesses were examined on behalf of the respective petitioners in the petitions and Exs.A-1 to A-24, and Ex.B-1 – copy of insurance policy was marked. Exs.A-14 and A-16 are the wound certificates of the appellants, which reveal that they suffered grievous and simple injuries. There is also the evidence of P.W.10, Dr. V. Srinivasa Raju, who corroborated with their evidence and spoke about the genuineness of Exs.A-14 and A-16. There is no reason for P.W.10, the doctor who treated the appellants, to depose false and support of the case of the appellants. There is no evidence on behalf of the 2nd respondent-insurer to believe that the accident was caused due to the rash and negligent driving of the jeep, by which the appellants were travelling. It is also evident from the record *i.e.*, Ex.A-1 attested copy of F.I.R., Ex.A-2 – attested copy of charge sheet, which are against the driver of the crime vehicle. There is no reason for the Investigating Officer to lay a false charge sheet against the driver of the crime vehicle. The charge sheet also revealed that P.W.4 suffered grievous injuries and P.W.5 suffered injuries. There is no reason to disbelieve the injuries caused to them as exhibited under EXs.A-14 and A.16. Under these circumstances, it can safely be concluded that the appellants have suffered injuries due to the rash and negligent driving of the driver of the crime vehicle and the Tribunal has recorded the same

after elaborate appreciation of the evidence on record. Hence, no other finding can be substituted. The point is accordingly answered.

14. **POINT No.2:** Since the appellant, P.W.4, in latter Appeal *i.e.*, M.A.C.M.A. No.879 of 2011, suffered fractures in his left fore-arm and also fractures in 5th to 9th ribs on his right side, he can be granted a compensation of Rs.40,000/- under the head of pain and suffering, instead of Rs.15,000/- as granted by the Tribunal, and the same is, accordingly, granted. Ex.A-15 is the bunch of medical bills relating to the treatment of P.W.4, wherein it is exhibited that the hospital expenses of Rs.10,250/- and an amount of Rs.4,951/- towards medicines were incurred and the same were granted by the Tribunal. P.W.10, who treated P.W.4 deposed about the genuineness of said bills and stated that he charged Rs.10,000/- for treatment. Taking this into consideration, the Tribunal has, accordingly, granted Rs.10,250/- towards hospital expenses and Rs.4,951/- towards medicines. As far as these amounts are concerned, there is no infirmity in awarding the said amounts and the same are, accordingly, retained. The Tribunal, keeping in mind the injuries suffered by P.W.4, awarded an amount of Rs.3,000/- towards extra nourishment and transportation charges, though no document was filed to substantiate his claim. It is evident from Ex.A-14, wound certificate, that P.W.4 attended the hospital time and again and incurred expenses. Therefore, an amount of Rs.3,000/- awarded by the Tribunal towards transportation charges and extra nourishment is just and reasonable and needs no interference. The Tribunal, while observing that due to the grievous injuries suffered he did not work for six months, granted an amount of Rs.7,200/- towards loss of earnings, at the rate of Rs.1,200/- p.m. It is evident from the record that P.W.4 is aged about 25 years and he earned not less than an amount of Rs.2,000/- p.m. Hence, instead of Rs.7,200/-,

an amount of Rs.12,000/- is granted towards loss of earnings. In all, the appellant in M.A.C.M.A. No.879 of 2011 is entitled for an amount of Rs.72,201/- and the same is rounded off to Rs.72,000/-.

15. Coming to the case of appellant, P.W.5, in former Appeal *i.e.*, M.A.C.M.A. No.485 of 2006, P.W.10, the doctor who treated him, deposed about P.W.5 suffering injuries in the accident and also taking treatment in the hospital. Ex.A-16 is the wound certificate, which reveals that P.W.5 suffered fracture in the right fore-arm and in the left elbow. The Tribunal relying on the evidence of P.W.10, giving elaborate reasons, held that P.W.5 had suffered the above injuries and granted an amount of Rs.15,000/- towards pain and suffering which is meagre and not adequate and, hence, the same is enhanced to Rs.35,000/-. Ex.A-17 is the bunch of medical bills, which reveal that Rs.2,100/- and Rs.301/- were spent by P.W.5 for medicines. P.W.10, the doctor, also stated that he charged Rs.2,000/- for treatment and also spoke about the genuineness of Ex.A-17, bunch of medical bills. There is no reason to disbelieve the same. The Tribunal has rightly granted an amount of Rs.2,401/- towards medical expenses and the same is, accordingly, retained. Though, the appellant, P.W.5, submitted that he suffered permanent disability, there is no corroborating evidence to award the amount under this score. The Tribunal, after examining the entire record, had granted an amount of Rs.3,000/- towards transportation and extra nourishment and the same is retained. Further, the Tribunal, due to the disability suffered by P.W.5, in earning, observing that he did not work for six months, granted an amount of Rs.7,200/- at the rate of Rs.1,200/- p.m. towards loss of earnings, which is very meagre. The Appellant, P.W.5, is aged 43 years and could earn an amount of Rs.2,000/- p.m., so an amount of Rs.12,000/- is granted towards loss of earnings for six months at the rate of Rs.2,000/- p.m. In

all, the appellant in M.A.C.M.A. No.485 of 2006 is entitled for an amount of Rs.52,401/- and the same is rounded off to Rs.52,000/-.

16. Admittedly, the tractor and trailer bearing Nos.AP-24-T-8034 and 8035, belonging to the 1st respondent, is validly insured with the 2nd respondent-insurer, as per Ex.B-1, copy of insurance policy, on the date of accident. There is no evidence to believe that 1st respondent-owner of the crime vehicle had violated the terms and conditions of the insurance and, hence, respondent Nos.1 and 2 are jointly and severally liable to pay the compensation, awarded hereinabove, to the appellants. There are no other circumstances to enhance the amount on other scores. However, the rate of interest awarded by the Tribunal at the rate of 9% p.a. is on higher side and the same is reduced to 7.5% p.a.

17. The following is the tabular form showing the amount of compensation awarded by the Tribunal and modified by this Court, if ay, under each head, in both the Appeals:

Sl. No.	Name of Head	Awarded by Tribunal in OP No.1230/2001	Modified by this Court in MACMA No.485/2006	Awarded by the Tribunal in OP No.1229/2001	Modified by this Court in MACMA No.879/2011
1.	Pain and suffering	15,000/-	35,000/-	15,000/-	40,000/-
2.	Medical expenses	2,401/-	2,401/-	15,201/-	15,201/-
3.	Extra nourishment and transportation	3,000/-	3,000/-	3,000/-	3,000/-
4.	Loss of earnings	7,200/-	12,000/-	7,200/-	12,000/-
	TOTAL	27,601/-	52,401/- (52,000/-)	40,401/-	72,201/- (72,000/-)

18. Accordingly, both the Appeals are allowed in part, enhancing the compensation awarded by the Tribunal from Rs.27,601/- to Rs.52,000/- in

M.A.C.M.A. No.485 of 2006 and enhancing the compensation from Rs.40,401/- to Rs.72,000/- in M.A.C.M.A. No.879 of 2011, modifying the rate of interest of interest awarded by the Tribunal from 9% to 7.5% p.a. Respondents 1 and 2 are jointly and severally liable to pay the compensation. After depositing the compensation amount, the appellants are permitted to withdraw the entire compensation amount. The other conditions in the impugned orders remain unaltered.

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

Date: 03.03.2017.
Dsh

Dr. SHAMEEM AKTHER, J



HON'BLE Dr. JUSTICE SHAMEEM AKTHER

233



27032017

M.A.C.M.A. Nos. 485 OF 2006 & 879 OF 2011

Date. 03.03.2017

DSH