

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No. 2312 OF 2006

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), by the appellant, who is the claim petitioner in O.P. No.439 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge (Fast Track Court), Nalgonda (for short, 'the Tribunal'), having got dissatisfied with the award of compensation of Rs.29,250/-, as against Rs.50,000/-, with interest at 8% per annum from the date of petition till realisation, vide the order dated 16.12.2005, for the injuries sustained by him in a motor accident occurred on 21.02.2003.

2. The case of the appellant would show that on 21.02.2003, the petitioner and son-Shivananda Reddy were proceeding by scooter from Nalgonda to Kangal and when they reached near the bridge of Yellamma temple of Darveshipuram village, the petitioner stopped his scooter and when he was talking to others, outside the road margin, a DCM van bearing No.AP 24U 2323, driven by its driver in a rash and negligent manner at high speed, came and dashed the scooter, due to which, the petitioner sustained grievous injuries and his son also received injuries and died on the spot; immediately after the accident, the petitioner was shifted to Government Civil Hospital, Nalgonda, where he took treatment as an inpatient and thereafter, took treatment in private hospitals, i.e., Kadimi Hospital and Archana Dental Hospital at Nalgonda; Kangal Police also registered a case in Crime No.8 of 2003 for the offences punishable under Sections 304-A and 337 IPC against the driver of the said DCM van; prior to the accident, the petitioner was doing agriculture and earning Rs.5,000/- per month, but due to the accident, he is unable to do work and lost income; therefore, he sought a sum of Rs.50,000/-

as compensation from respondent Nos.1 and 2, who are the owner and insurer of the crime vehicle.

3. Respondent No.1-owner of the crime vehicle remained *ex parte* before the Tribunal. Respondent No.2-insurer filed counter before the Tribunal denying all the averments made in the petition and contended that respondent No.1, in collusion with the petitioner, did not inform about the accident to the insurer; that the accident occurred only due to the contributory negligence on the part of the petitioner; the compensation claimed by the petitioner is highly excessive; and finally, prayed to dismiss the petition.

4. The Tribunal clubbed this petition along with two other petitions, i.e., O.P. Nos.651 and 652 of 2003 filed by other injured in the same accident, conducted common trial and recorded evidence of P.Ws.1 to 5 and marked documents Exs.A.1 to A.22 and Ex.B.1 in all the three claim petitions. The Tribunal, after considering the evidence on record, both oral and documentary, determined compensation as Rs.29,250/- in this petition and granted the same with interest at 8% per annum from the date of petition till realisation against both the respondents.

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 05.07.2016 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:

¹ 2001(1) ALT 495 (D.B.)

"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."

6. The contention of the learned counsel for the appellant-petitioner is that there is clear evidence with regard to the rash and negligent driving on the part of the driver of the DCM van bearing No.AP 24U 2323; the appellant has suffered three grievous injuries, was bedridden for a considerable time and spent huge amount towards medical expenses, but the Tribunal has not taken all these factors into consideration and granted only Rs.29,250/-; and therefore, sought to enhance the compensation to Rs.50,000/- as claimed by the appellant.

7. On the other hand, learned Standing Counsel for respondent No.2-insurer contended that the Tribunal has rightly granted just and reasonable compensation to the appellant-petitioner; the accident occurred due to the fault of the appellant; the appellant is not entitled for any compensation; and finally, prayed to dismiss the appeal.

8. On perusal of the record, the appellant in this case was examined as P.W.1 and marked Ex.A.1-certified copy of F.I.R., Ex.A.2-

certified copy of wound certificate, Ex.A.3-certified copy of Motor Vehicles Inspector's report, Ex.A.4-certified copy of charge sheet and Ex.A.5-prescriptions issued by Aruna Multi Specialty Dental Clinic relating to the appellant. The evidence of P.W.1 and the documents Exs.A.1 to A.5 clearly reveal the rash and negligent driving on the part of the driver of the DCM van bearing No.AP 24U 2323 in causing accident and suffering injuries by the appellant in the said accident. The Tribunal also rightly held that the accident occurred only due to the rash and negligent driving of the driver of the DCM van bearing No.AP 24U 2323 and the appellant suffered injuries in the said accident. As such, no different opinion can be substituted.

9. As far as the award of compensation by the Tribunal to the appellant is concerned, there is clear evidence of P.W.1-injured and P.W.3-doctor about the injuries suffered by P.W.1, the appellant-petitioner. Ex.A.2-certified copy of the wound certificate also reveals that the appellant-petitioner received the injuries in the accident, which are, (1) Left condylar fracture (mandible); (2) Parasymphysis of mandible fracture; and (3) Dento alveolar fracture. The evidence of P.W.3-Dr. J.Ramesh Reddy reveals that he is maintaining a dental hospital in the name and style of Aruna Multi Speciality Dental Clinic from 13.12.1999 at Nalgonda; on 22.02.2003, he examined the appellant and recorded the aforesaid injuries; the appellant lost upper three teeth, undergone for scanning of left and right oblique views of mandible and due to the loss of three teeth, he cannot be chew hard things. Ex.A.5-prescriptions, Ex.A.6-estimation for treatment and Ex.A.7-receipt are issued by him and Ex.A.8-bunch of medical bills and Ex.A.9-bunch of X-ray were taken as per the prescriptions. In his cross-examination, he reiterated the same. There is nothing to disbelieve the evidence of P.W.3 with regard to his evidence and genuineness of Exs.A.5 to A.9. Therefore, considering all the

facts and circumstances, the amount of Rs.21,000/- awarded by the Tribunal is not just and reasonable with regard to the three injuries suffered by the appellant and the same is enhanced to Rs.30,000/-. It is evident from the record, the petitioner is an agriculturist, though he has categorically deposed that he was earning Rs.5,000/- per month, but could not produce any certificate and the Tribunal has taken the earnings of the appellant as Rs.50/- per day and granted Rs.750/- for 15 days. No agricultural labourer or the person having agricultural income can produce certificate of his earnings. There is no authority to maintain such record. Therefore, the monthly earnings of the appellant can be taken as Rs.3,000/-. It can be safely held that the appellant could not work for a period of two months due to the injuries sustained in the accident. Therefore, a sum of Rs.6,000/- is granted towards loss of earnings as against Rs.750/- granted by the Tribunal. The Tribunal granted Rs.6,000/- towards treatment and Rs.1,500/- towards medical expenses, but no amount is granted under the heads, such as, extra nourishment, attendant charges and transportation to the hospital. Therefore, a total sum of Rs.14,000/- is granted towards treatment, medical expenses, extra nourishment, attendant charges and transportation to the hospital, as against the amounts of Rs.6,000/- and Rs.1,500/- granted by the Tribunal.

10. In all, the appellant-petitioner is entitled to a total sum of Rs.50,000/- as against Rs.29,250/- granted by the Tribunal. So far as the rate of interest is concerned, the Tribunal granted interest at the rate of 8% 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.

² 2013 ACJ 1403

11. Accordingly, this appeal is allowed modifying the order dated 16.12.2005 passed by the Tribunal, enhancing the compensation from Rs.29,250/- to Rs.50,000/- with interest at the rate of 7.5% per annum from the date of petition till realisation. The other terms of the order under challenge remain unchanged. The appellant-petitioner is permitted to withdraw the entire amount with interest. No order as to costs. Miscellaneous Petitions pending, if any, shall stand closed.

Dr. SHAMEEM AKTHER, J

Date: 16.02.2017

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