

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. Nos. 1976, 1983, 1984 AND 2114 OF 2006

COMMON JUDGMENT:

All these four appeals arise out of a common order dated 08.06.2006 passed in O.P. Nos.739, 740, 741 and 890 of 2004 on the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Karimnagar (for short, 'the Tribunal'). Appellants in all the four appeals preferred these appeals under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') seeking enhancement of compensation for the injuries sustained by them in a motor accident, contending that the compensation granted by the Tribunal is very meagre.

2. The brief facts of the case are that the appellants while returning from Hanmakonda to Karimnagar in a jeep bearing registration No.AIR 3895 on 07.11.2003 and in the midnight when they reached outskirts of Huzurabad, a DCM van bearing registration No.AP 15V 8116 driven by respondent No.1 in a rash and negligent manner at high speed, came in opposite direction and hit the jeep, due to which all the appellants travelling by jeep received injuries and thereafter, they were shifted to MGM Hospital, Warangal, for treatment, where they had undergone treatment as in patients. A criminal case was registered in Crime No.189 of 2003 for the offences punishable under Sections 304-A, 337 and 338 IPC against respondent No.1-driver of the crime vehicle.

3. Respondent Nos.1 and 2, who are driver and owner of DCM van bearing registration No.AP 15V 8116, filed separate counters before the Tribunal contending that the accident was result of rash and negligent driving of the driver of the jeep in which the appellants-petitioners were travelling and, in any event, since the DCM van was insured with respondent No.3, the liability of respondent No.2, if any, has to be indemnified by respondent No.3. Whereas, respondent No.3-insurer of the DCM van filed separate counters before the Tribunal denying all the material averments in the petitions and putting the petitioners to strict proof of the same and further pleaded that in any event the quantum of compensation claimed is highly excessive and finally, sought for dismissal of all the claim petitions.

4. The Tribunal tried all the four claim petitions together and after considering the evidence of P.Ws.1 to 6 and the documents Exs.A.1 to A.31, granted Rs.10,000/- to the appellant in M.A.C.M.A. No.1976 of 2006 (O.P. No.739 of 2004), Rs.8,000/- to the appellant in M.A.C.M.A. No.2114 of 2006 (O.P. No.740 of 2004), Rs.5,000/- to the appellant in M.A.C.M.A. No.1984 of 2006 (O.P. No.741 of 2004) and Rs.5,000/- to the appellant in M.A.C.M.A. No.1983 of 2006 (O.P. No.890 of 2004) as compensation against respondent Nos.1 to 3.

5. Heard the learned counsel for the appellants-petitioners and the learned Standing Counsel for respondent No.3-insurer in all the four appeals. Though, served with notices, none appears on

behalf of respondent Nos.1 and 2, who are driver and owner of the offending vehicle. However, non-appearance of 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 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. Learned counsel for the appellants in all the four appeals contended that the Tribunal, without taking into consideration the pain and suffering undergone by them, due to the grievous and simple injuries, disability suffered by them, loss of earnings, the Tribunal granted meagre amounts in all the claim petitions and therefore, prayed to enhance the compensation as prayed for.

¹ 2001(1) ALT 495 (D.B.)

7. On the other hand, learned counsel for respondent No.3-insurer contended that the Tribunal had taken into account the entire evidence, facts and circumstances of the case and awarded just compensation and, as such, no interference is required in this matter.

8. There is no much contention with regard to the rashness and negligent driving the part of respondent No.1-driver of DCM van bearing No.AP 15V 8116 and tagging liability on respondent No.3-insurer along with the owner of the vehicle, respondent No.2 herein. The Tribunal, considering the evidence of P.Ws.1 to 4 and the documents Ex.A.1-certified copy of F.I.R., Ex.A.2-certified copy of charge sheet, Ex.A.3-certified copy of injury certificate of P.W.1, Ex.A.11-injury certificate of P.W.2, Ex.A.15-certified copy of medical certificate of P.W.3, Ex.A.22-injury certificate of P.W.4, Ex.A.24-certified copy of accident information report and Ex.A.25-certified copy of Motor Vehicles Inspector's report, came to a conclusion that the accident had occurred only due to the rash and negligent driving of respondent No.1-driver of the DCM van bearing registration No.AP 15V 8116, by assigning reasons. Therefore, no different view can be substituted in this regard.

9. M.A.C.M.A. No.1976 of 2006: As seen from the record, the Tribunal has granted an amount of Rs.10,000/- to the petitioner in O.P. No.739 of 2004 as against Rs.1,00,000/- claimed by him. The Tribunal did not award compensation on different

scores, such as, pain and suffering, loss of earnings, medical expenses, extra nourishment, transport and attendant charges. The evidence of P.W.1-injured in this case and the evidence of P.W.5-doctor who treated P.W.1 and Ex.A.3-injury certificate reveals that the petitioner suffered fracture of both bones of left leg and tenderness over chest also present. So, it establishes that the petitioner suffered one grievous injury and one simple injury. In view of the said injuries, it is evident that the petitioner was prevented from attending to his work atleast for a period of six months, he was aged 44 years, Attender in S.R.S.P., Jammikunta, Ex.A.9-salary certificate showing gross salary at Rs.5,709/- per month. Though he has not filed any certificate, some amount can be granted. Therefore, taking into the totality of circumstances into account, the petitioner is entitled for compensation under the following heads:

1.	For injuries, pain and suffering	40,000-00
2.	Towards extra nourishment @ Rs.2,000/- per month for three months, as he requires special diet.	6,000-00
3.	Towards attendant and transport, since somebody has to attend him.	10,000-00
4.	Loss of earnings @ Rs.3,000/- per month for six months	18,000-00
5.	Total	74,000-00

10. M.A.C.M.A. No.2114 of 2006: As seen from the record, the Tribunal has granted an amount of Rs.8,000/- to the petitioner in O.P. No.740 of 2004 as against Rs.1,00,000/- as claimed by him. The Tribunal has not granted the compensation on different scores,

such as, pain and suffering, loss of earnings, medical expenses, extra nourishment, transport and attendant charges. The evidence of P.W.2-injured in this case and the evidence of P.W.5-doctor who treated P.W.2 and Ex.A.11-injury certificate reveals that the petitioner sustained fracture of third rib, fracture of left clavicle and lacerated injury over left ear. So, it establishes that the first two injuries are grievous and the third injury is simple in nature. In view of the said injuries, it is evident that the petitioner was prevented from attending to his work atleast for some period, the petitioner was working as Attender in S.R.S.P., Jammikunta, though he has not filed any record to show that he is on leave for a considerable period. Therefore, taking into the totality of circumstances into account, the petitioner is entitled for compensation under the following heads:

1.	For injuries, pain and suffering	30,000-00
2.	Towards extra nourishment as he was bedridden for the injuries.	5,000-00
3.	Towards attendant charges	5,000-00
4.	Towards transportation and loss of amenities	5,000-00
5.	Loss of earnings	5,000-00
6.	Total	50,000-00

11. M.A.C.M.A. No.1984 of 2006: As seen from the record, the Tribunal has granted an amount of Rs.5,000/- to the petitioner in O.P. No.741 of 2004 as against Rs.1,00,000/- claimed by him. The Tribunal did not grant compensation on different scores, such as, pain and suffering, loss of earnings, medical expenses, extra

nourishment, transport and attendant charges. The evidence of P.W.3-injured in this case and the evidence of P.W.5-doctor who treated P.W.3 and Ex.A.15-injury certificate reveals that the petitioner sustained fracture of lateral end of left clavicle, which is grievous in nature. Though, the petitioner claimed Rs.50,000/- towards medical expenses, he filed Ex.A.19-bunch of medical bills to a tune of Rs.1,657/-. Though, the petitioner has not filed any medical bills, he can be granted Rs.5,000/- towards medical bills. The petitioner was Typist in S.R.S.P., Jammikunta There is clear evidence to believe that the petitioner sustained a grievous injury. In view of the said injuries, it is evident that the petitioner was prevented from attending to his work atleast for a period of one month. Therefore, taking into the totality of circumstances into account, the petitioner is entitled for compensation under the following heads:

1.	For injury, pain and suffering	25,000-00
2.	Towards loss of earnings	5,000-00
3.	Towards extra nourishment, attendant and transport charges	5,000-00
4.	Medical expenses	5,000-00
5.	Total	40,000-00

12. M.A.C.M.A. No.1983 of 2006: As seen from the record, the Tribunal has granted an amount of Rs.5,000/- to the petitioner in O.P. No.890 of 2004 as against Rs.2,00,000/- claimed by him. The evidence of P.W.4-petitioner reveals that he sustained a fracture to his left leg, fracture to his ribs, head injury and other

parts of the body, immediately he was shifted to MGM Hospital, Warangal, where he was treated for 15 days as inpatient, a surgery was conducted and steel rods were inserted and he incurred Rs.20,000/- towards treatment. P.W.4 also stated that he incurred Rs.1,00,000/- towards medical expenses and other charges; he was bedridden for four months; he was advised for bed rest for a period of four months; and for two months he had to walk with the supporting stand. He further stated that he was working as Attender in S.R.S.P. Department at Jammikunta; earning Rs.6,000/- per month; and on account of the injuries, he could not attend to his duty for six months; still, he is taking medicines; and due to the injuries, he developed disability in the form of limping. Ex.A.22 is the injury certificate issued by the Civil Assistant Surgeon, MGM Hospital, Warangal, Ex.A.23 is the radiologist certificate, Ex.A.26 is his salary certificate showing his gross salary as Rs.5,871/- and net salary as Rs.5,186/-, Ex.A.27 is the bunch of medical bills, Ex.A.28 is the discharge card, Ex.A.29 is the bunch of X-ray films, Ex.30 is the disability certificate showing the disability of 20% suffered by P.W.4 and Ex.A.31 is the bunch of medical prescriptions. In the cross-examination, P.W.4 reiterated the same and denied that he is deposing false. As per Ex.A.22-injury certificate, P.W.4 sustained the injuries, which are:

- (1) Tenderness diffuse in left side of chest;
- (2) Abrasion 2 x 2 cm on the back of left leg;
- (3) Linear abrasion 4 x 1 cm on the forehead;
- (4) Laceration 4 x 1 cm on the occipital region;

- (5) Tenderness swelling of diffuse of left thigh; and
- (6) Fracture of proximal part of shaft left femur.

13. The evidence of P.W.6-doctor, who treated P.W.4, reveals that he is working as Civil Assistant Surgeon in District Headquarters Hospital, Karimnagar, who is also the Member of District Medical Board, Karimnagar, and on 12.07.2005, he examined P.W.4 and found post-operative intra medullary nailing left femur for segmental fracture, fracture united, wasting of thigh and leg musculature, difficulty in squatting and shortening of left lower limb by half-inch and the disability is estimated at 20% and it is permanent and partial disability and Ex.A.30 is the disability certificate issued by their Medical Board which reveal the same. In the cross-examination, P.W.6 denied that he was deposing false and also reiterated that P.W.4 has suffered 20% disability and he gave a disability certificate. Nothing is brought out in the cross-examination of P.W.6 to discard his evidence. At this stage, learned counsel for respondent No.3-insurer would contend that there is no mention of such injuries, treatment taken by P.W.4 and the disability of 20% in the claim petition. But as per the evidence and the documents placed before the Court, there is a clear cut evidence of P.Ws.4 and 6 with regard to the petitioner suffering the injuries shown in Ex.A.22 and as deposed by P.W.6. There is clear mention in Ex.A.22-injury certificate about the fracture of left femur and the disability of 20% in Ex.A.30-disability certificate. Therefore, taking into the totality of circumstances into account,

the petitioner is entitled to Rs.60,000/- towards pain and suffering for the fracture injury. Since there is a fracture, the petitioner cannot move for a period of six months, though he has not placed any record that he was on leave for a considerable period. Petitioner has stated in the claim petition that he was drawing salary of Rs.5,871/- at the time of accident. It is evident from Ex.A.26-salary certificate, the petitioner was drawing gross salary of Rs.5,871/-. Therefore, the petitioner is entitled to Rs.15,000/- towards loss of earnings. As per Ex.A.27-bunch of medical bills, there is mention of petitioner incurring Rs.3,290/- towards medical expenses. The petitioner stated in the petition that he incurred a sum of Rs.1,00,000/- towards medical expenses. It is not possible to anybody to preserve all medical bills with them and file them before the Court. Therefore, a sum of Rs.10,000/- is granted towards medical expenses, transportation, extra nourishment and attendant charges. It is evident from the record, the petitioner sustained 20% disability. On that score also, since the petitioner is in Government service, there are loss of amenities due to that disability, there is also shortening of his leg by half-inch. Therefore, a sum of Rs.40,000/- is granted for said disability and shortening of leg.

14. Therefore, in total the petitioner is entitled for compensation under the following heads:

1.	Towards pain and suffering	60,000-00
2.	Loss of earnings	15,000-00
3.	Towards medical expenses, transportation, extra nourishment and attendant charges	10,000-00
4.	Towards disability	40,000-00
5.	Total	1,25,000-00

15. Accordingly, all the four appeals are allowed in part, modifying common order under challenge passed by the Tribunal, by enhancing the compensation as follows:

S.No.	Appeal No.	O.P. No.	Amount granted by the Tribunal	Amount granted by the Tribunal is enhanced to
1.	MACMA No.1976 of 2006	O.P. No.739 of 2004	Rs.10,000-00	Rs.74,000-00
2.	MACMA No.2114 of 2006	O.P. No.740 of 2004	Rs.8,000-00	Rs.50,000-00
3.	MACMA No.1984 of 2006	O.P. No.741 of 2004	Rs.5,000-00	Rs.40,000-00
4.	MACMA No.1983 of 2006	O.P. No.890 of 2004	Rs.5,000-00	Rs.1,35,000-00

All the appellants are entitled to interest on the compensation amount @ 7.5% per annum from the date of petition till realisation. All the appellants are permitted to withdraw their entire amounts with interest. The common order under challenge in these appeals shall remain unchanged in other respects. There shall be no order as to costs. Miscellaneous Petitions pending, if any, shall stand closed.

Dr. SHAMEEM AKTHER, J.

Date: 27.01.2017
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