

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.1102 OF 2005

JUDGMENT:

1. This Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), is filed by the appellant, who is the petitioner in O.P. No.917 of 2002 on the file of the Chairman, Motor Vehicles Accidents Claims Tribunal-cum-V Additional Chief Judge, City Civil Court, Hyderabad (for short, 'the Tribunal'), aggrieved by the order dated 21.02.2005, whereby the Tribunal while granting compensation of Rs.9,927/-, against the original claim of Rs.1,25,000/-, laid under Section 166 of the Act, for the injuries sustained by him in a motor accident occurred on 08.04.2002, directed the 2nd respondent-insurer to satisfy the awarded amount and then to recover the same from 1st respondent-owner of the jeep bearing registration No.AP 28 C 7542 (for short, 'the crime vehicle').

2. Heard Sri K.Venkata Ram Reddy, learned counsel for the appellant-petitioner, Sri G.S.G.Radha Krishna, learned Standing Counsel for the 2nd respondent-insurer and Sri L.Harish, learned counsel for the 3rd respondent. In spite of service of notice, none entered appearance on behalf of the 1st respondent-owner of the crime vehicle.

3. The case of the petitioner, in brief, is that on 08.04.2002, when the petitioner and others, after watching a drama at Mahabubnagar, were returning to their village Gadsingapur, from Mahabubnagar, the crime vehicle being driven by its driver in a rash and negligent manner hit Maisamma temple near khamma cheruvu, due to which the crime vehicle turned turtle causing injuries to the petitioner and other passengers. A case in Crime No.19 of 2002 for the offences under Sections 304-A and 337 I.P.C. was registered by Doma P.S. against the concerned. The

petitioner, who incurred huge medical expenditure, filed the petition claiming compensation of Rs.1,25,000/- against the respondents.

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 averments mentioned in the petition and called upon that the manner of accident, age, income and avocation of the petitioner at the time of accident and the permanent disability suffered by him be put to strict proof of the same and ultimately prayed for dismissal of the petition.

6. Respondent No.3, who got impleaded by petitioner as alleged owner of the crime vehicle at the time of accident, filed counter contending that, as on the date of accident, the crime vehicle was duly insured with the 2nd respondent-insurer and hence the 2nd respondent-insurer alone is liable to pay the compensation.

7. The Tribunal, after framing issues and, considering the evidence of P.Ws.1 and 2, R.Ws.1 and 2, and the documents Exs.A.1 to A.12 and Exs.B.1, awarded the compensation of Rs.9,927/- directing the 2nd respondent-insurer to satisfy the awarded amount and then recover the same from the 1st respondent-owner of the crime vehicle by initiating relevant proceedings before the executing court without filing a separate suit and dismissed the claim against the 3rd respondent, as the petitioner failed to prove that the 3rd respondent was the owner of the crime vehicle at the time of accident. Aggrieved by the said order, the present Appeal is preferred by the petitioner.

8. Learned counsel for the appellant-petitioner would submit that the petitioner suffered grievous injuries and suffered permanent disability but the Tribunal has granted only Rs.9,927/- towards compensation on all

heads, which is meagre. There is oral and documentary evidence on record to prove the injuries suffered by the petitioner and the disability and ultimately prayed to enhance the compensation as prayed for.

9. On the other hand learned standing counsel for the 2nd respondent-insurer would contend that the Tribunal had appreciated all the facts and circumstances and rightly granted just compensation. There is nothing to take a different view and ultimately prayed to dismiss the Appeal.

10. Learned counsel for the 3rd respondent would contend that there is no infirmity in the impugned order and prayed to dismiss the Appeal confirming the impugned order of the Tribunal.

11. In view of the rival contentions the sole point that arises for consideration is whether the appellant is entitled for enhancement of compensation, as prayed for?

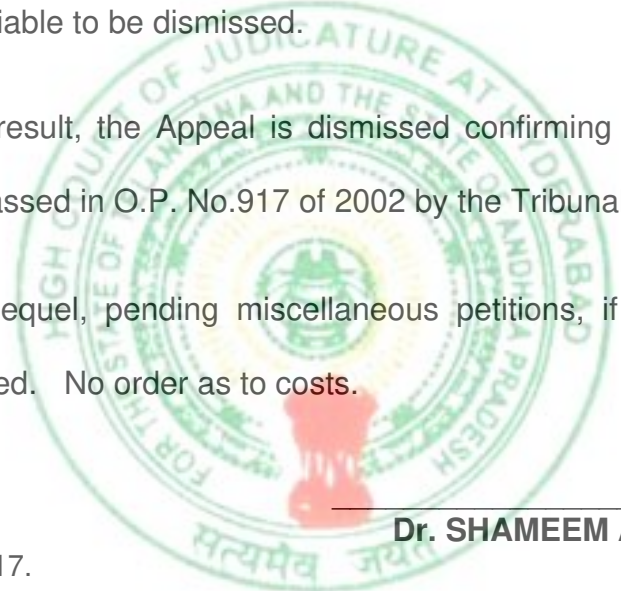
12. **POINT:** As seen from the evidence on record, the Tribunal had granted Rs.5,000/- towards pain and suffering, Rs.3,437/- towards extra nourishment, medicines and damages to clothing and Rs.1,500/- towards loss of earnings. As per the evidence of P.W.1, he suffered grievous injuries and disability. Ex.A-4 is the wound certificate of the petitioner; wherein one abrasion on left hand is found and there is no mention of grievous injuries suffered by him. Ex.A-5 is the discharge card of the petitioner wherein it is mentioned that he took treatment in Navodaya Nursing Home, Hyderabad, as inpatient from 08.04.2002 to 24.04.2002. Under Ex.A-5 also there is no mention of grievous injuries suffered by the petitioner.

13. P.W.2 was Professor and Head of the Department of Surgery in Osmania General Hospital, Hyderabad. His evidence reveals that he examined the petitioner on 08.04.2002 and found swelling of left fore-arm

and also stated that the petitioner did not receive any bone injury; there is no mention of the petitioner suffering any grievous injuries by P.W.2. P.W.2 further stated that on 09.04.2002 he referred the petitioner to a plastic surgeon. P.W.2 did not state the disability suffered by the petitioner and as such no disability certificate is available on record. The medical record shows that the petitioner was hospitalized from 08.04.2002 to 24.04.2002. The Tribunal while determining the quantum of compensation of Rs.9,927/-, on all scores, has taken into consideration all the facts and circumstances and no infirmity is found in the impugned order and there is nothing to take a different view. The Appeal is devoid of merits and is liable to be dismissed.

14. In the result, the Appeal is dismissed confirming the order dated 21.02.2005 passed in O.P. No.917 of 2002 by the Tribunal.

15. As a sequel, pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.



Dr. SHAMEEM AKTHER, J

Date: 04.10.2017.
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