

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.310 OF 2007

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.546 of 2004 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-V Additional District Judge at Nizamabad (for short, 'the Tribunal'), having got dissatisfied with awarding compensation of Rs.9,000/-, against the original claim of Rs.3,00,000/-, in directing both the respondents jointly and severally liable to pay the same with interest at 7.5% *per annum* from the date of petition till realisation, *vide* order of the Tribunal dated 20.11.2006, for the injuries sustained by him in a motor accident occurred on 07.04.2004.

2. Heard the arguments of learned counsel for the appellant-petitioner and the learned Standing Counsel for the 2nd respondent-insurer and perused the record.

3. Appellant herein is the petitioner-injured, 1st respondent herein is the owner of Auto rickshaw bearing registration No.AP-25U-5412 (for short, 'the crime vehicle') and the 2nd respondent herein is its insurer.

4. The parties hereinafter are referred to as arrayed before the Tribunal.

5. The case of the petitioner, in brief, is that on 07.04.2004 at about 08-00 p.m., when he along with others was travelling by the crime vehicle and when the crime vehicle reached near Yamaha Showroom, Vinayaka Nagar, Nizamabad, its driver drove the same at high speed, in a rash and negligent manner, and dashed the pedestrians; as a result of which, the crime vehicle turned turtle, the petitioner and others in the crime vehicle

sustained multiple and grievous injuries. The petitioner sustained fracture of right ankle, fracture of right shoulder clavicle, fracture of left leg tibia, multiple abrasions on the right ankle, left leg, right shoulder, laceration on right leg and other injuries on head, chest, hands and various parts of the body. Immediately, he was shifted to Sri Venkateswara Hospital, Nizamabad and admitted as in-patient therein. The petitioner, who was hale and healthy, doing vegetable and fruit business and earning Rs.10,000/- p.m. prior to the accident. Due to the accident, he is unable to attend his normal duties and became dependant on others. Hence, claimed compensation of Rs.3,00,000/- against the respondents.

6. Respondent No.1-owner of the crime vehicle remained *ex parte*.

7. Respondent No.2-insurer of the crime vehicle filed counter denying the material allegations of the petition *inter-alia* contending that the age, income, manner of accident, treatment taken at the hospital and medical expenses incurred by the petitioner be put to strict proof of the same. It was further contended that the driver of crime vehicle has no valid and effective driving license to drive the crime vehicle and as such the driver of crime vehicle is also necessary party to the proceedings and, finally, contended that the compensation claimed is highly excessive, exorbitant and sought for dismissal of the Petition.

8. The Tribunal, after framing issues and, considering the evidence of P.Ws.1 and 2 and the documents Exs.A.1 to A.9 and Ex.B-1, awarded compensation of Rs.9,000/- (*i.e.*, Rs.4,000/- towards medical expenses, extra diet and attendance, Rs.4,000/- towards pain and suffering and Rs.1,000/- towards loss of income) with interest at the rate of 7.5% per annum from the date of petition till realisation, making both the respondents jointly and severally liable to pay the compensation.

9. The appeal against the 1st respondent-owner of the crime vehicle was dismissed for default on 05.07.2016. However, absence of 1st respondent-owner of the crime vehicle is of no consequence to decide the quantum of compensation in this appeal, in view of a Division Bench decision of this Court in ***Meka Chakra Rao Vs. Yelubandi Babu Rao @ Reddemma and others***¹, wherein it was 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 submits that the petitioner has suffered three fractures and other simple injuries but the Tribunal has only granted a compensation of Rs.9,000/- on all other scores; as such, the Tribunal has not granted just compensation though there is oral and documentary evidence on record and, ultimately, prayed to enhance the compensation, as prayed for.

11. On the other hand, learned standing counsel for the 2nd respondent-insurer, contended that the Tribunal has taken all the facts and circumstances into account; there is no legally acceptable evidence to believe the original of Ex.A-3 – certified copy of injury certificate and other

¹ 2001 (1) ALT 495 (D.B.)

medical record filed before the Tribunal. The Tribunal had assigned valid reasons for not believing Ex.A-3 – wound certificate of the petitioner and as such granted the aforesaid compensation on all scores. There are no mitigating circumstances to interfere with the order of the Tribunal and, ultimately, prayed to dismiss the Appeal.

12. Now the point for determination is whether the appellant-petitioner is entitled for enhancement of compensation, as prayed for?

13. **POINT:** The Tribunal has analyzed the entire medical record including the oral and documentary evidence and concluded that there is no x-ray and other record to believe the fractures said to have been sustained by the appellant-petitioner. In Ex.A-3 also there was no mention of taking x-ray or referring the petitioner to any Radiologist and as such without x-ray it is not possible to assess the nature of injuries, suffered by the petitioner are grievous. In view of non filing of any x-ray, the oral evidence of P.W.2 did not inspire confidence to believe the case of the petitioner. The Tribunal while determining the compensation on all scores, assigned valid reasons and, accordingly, passed a reasoned order. Under these circumstances, there is nothing to interfere with the impugned order of the Tribunal. The Appeal is devoid of merits and is, accordingly, dismissed.

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

Dr. SHAMEEM AKTHER, J

Date: 21.07.2017.
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