

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.2604 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 M.V.O.P. No.337 of 2001, laid under Section 166(1)(a) of the Act, on the file of the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge, East Godavari at Kakinada (for short, 'the Tribunal'), aggrieved by the order dated 29.04.2005, whereby the Tribunal while granting compensation of Rs.48,500/-, against the original claim of Rs.2,50,000/-, for the injuries sustained by him in a motor accident occurred on 12.03.2001, directed that the respondents 1 to 3 are jointly and severally liable to pay the same with interest at the rate of 9% p.a. from the date of petition till the date of deposit.

2. Appellant herein is the petitioner; 1st respondent herein is the driver, 2nd respondent herein is the owner, and the 3rd respondent herein is the insurer of Ambassador Car bearing registration No.AP 31U 1446 (For short, 'the crime vehicle').

3. Heard Sri J.Bhaskara Rao, learned counsel for the appellant-petitioner, Smt S.A.V.Ratnam, learned standing counsel for the 3rd respondent-insurer and perused the record. The Appeal against the 1st and 2nd respondents was dismissed for default *vide* order of this Court on 05.01.2012.

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

5. The case of the petitioner, in brief, is that on 12.03.2001, when he along with another was proceeding by a scooter bearing No.AP-5J-7595 from Yerravaram to Krishnapuram village and when reached near Boosala Satyanarayana Saw Mill, Jaggampeta, the crime vehicle being driven by 1st respondent in a rash and negligent manner dashed against the scooter; as a result of which, the petitioner fell down, sustained grievous multiple injuries all over the body; for which, the petitioner took treatment as inpatient in Government General Hospital, Kakinada, and also at Rajahmundry, incurred an amount of Rs.70,000/- towards medical expenses and his treatment. Subsequently, a case in Crime No.34 of 2001 for the offences under Sections 337 and 338 of I.P.C. was registered against the 1st respondent by S.H.O. Jaggampeta. Prior to the accident, the petitioner was working as an agriculturist and a businessman, earning Rs.6,000/- p.m. Due to the accident, the petitioner could not work for a long time and suffered monetary loss. The accident occurred due to the rash and negligent driving of the driver of crime vehicle, filed the petition against the respondent Nos.1 to 3, being the driver, owner and insurer of the crime vehicle, seeking compensation of Rs.2,50,000/-.

6. Respondent Nos.1 and 2, driver and owner of the crime vehicle, remained *ex parte* before the Tribunal.

7. Respondent No.3, insurer of the crime vehicle, filed counter denying the material allegations of the petition *inter-alia* contending that manner of the accident and earnings of the petitioner, sustaining injuries, undergoing treatment as inpatient and incurring medical expenditure be put to strict proof of the same. It was further contended that it is the duty of the petitioner to prove the valid and effective driving license being possessed by the 1st respondent and the 2nd respondent was having fitness certificate and route permit of the crime vehicle at the time of

accident; the 2nd respondent failed to inform the accident and colluded with the petitioner to cause loss to him. It was further contended that the 1st respondent is not rash and negligent in driving the crime vehicle and it is the petitioner who drove the scooter rashly and negligent and caused the accident and finally contended that the compensation claimed is excessive and exorbitant, sought for dismissal of the petition.

8. The Tribunal, after framing issues and, considering the evidence of P.Ws.1 and 2, R.W.1 and the documents Exs.A.1 to A.4, Exs.X-1 to X-4 and Ex.B.1, awarded the compensation of Rs.48,500/- (*i.e.*, Rs.30,000/- towards pain and suffering, Rs.8,000/- towards medicines, Rs.1,500/- towards extra nourishment and Rs.9,000/- towards loss of earnings) directed that the respondents 1 to 3 are jointly and severally liable to pay the same with interest at the rate of 9% p.a. from the date of petition till the date of deposit.

9. Learned counsel for the appellant-petitioner would submit that the Tribunal granted meagre compensation, though there are grievous and simple injuries suffered by the petitioner; as per Ex.A.2-wound certificate, the petitioner sustained lacerated injury on the right leg; P.W.2-doctor is competent to certify the disability of the petitioner; though the petitioner claimed Rs.2,50,000/-, the Tribunal awarded only Rs.48,500/- is quite unjustifiable; and ultimately, prayed to enhance the compensation as claimed.

10. On the other hand, learned Standing Counsel for respondent No.3-insurer would submit that the Tribunal taking into consideration all the facts and circumstances, granted adequate and reasonable compensation; there are no circumstances to enhance the compensation; and ultimately, prayed to dismiss the appeal.

11. There is no contest with regard to the rashness and negligence on the part of the driver of the crime vehicle, i.e., ambassador car bearing No.AP 31U 1446 and also with regard to the coverage of insurance policy of the crime vehicle on the date of occurrence of the accident. Therefore, no different opinion can be taken in respect of these aspects. The only point for determination is, whether the petitioner is entitled for enhancement of compensation as claimed?

12. As per the oral testimony of the petitioner examined as P.W.1, he sustained fracture to both legs and he filed Ex.A.2-attested copy of wound certificate, Ex.X.1-X-ray films and Ex.X.3-case sheet. A perusal of Ex.A.2-wound certificate reveals that the petitioner sustained fracture of right tibia and fibula. The oral testimony of the petitioner-P.W.1 that he sustained fracture to his left leg is not supported by the medical evidence. Ex.A.2 is corroborated with P.W.1's testimony. As per Ex.A.2, the petitioner suffered only one fracture and two simple injuries (i.e., right tibia and fibula). Ex.X.1-X-ray films and Ex.X.2-case sheet issued by the Government General Hospital, Kakinada, reveal that the petitioner sustained fracture to both bones of right leg and right patella and he took treatment as inpatient from 12.03.2001 to 16.04.2001 by undergoing operation on 28.03.2001. As per the testimony of P.W.1, he underwent operation in Rajahmundry and plate fixation was done. There is inconsistency in the medical evidence and oral evidence with regard to the petitioner suffering injuries. Recording the said aspect, the Tribunal granted an amount of Rs.30,000/- for pain and suffering and also discussed the entire evidence on record with regard to the medical expenses, transportation and other expenses and ultimately, granted a sum of Rs.8,000/- towards medical expenses, Rs.1,500/- towards extra nourishment and Rs.9,000/- towards loss of earnings. As per the criminal

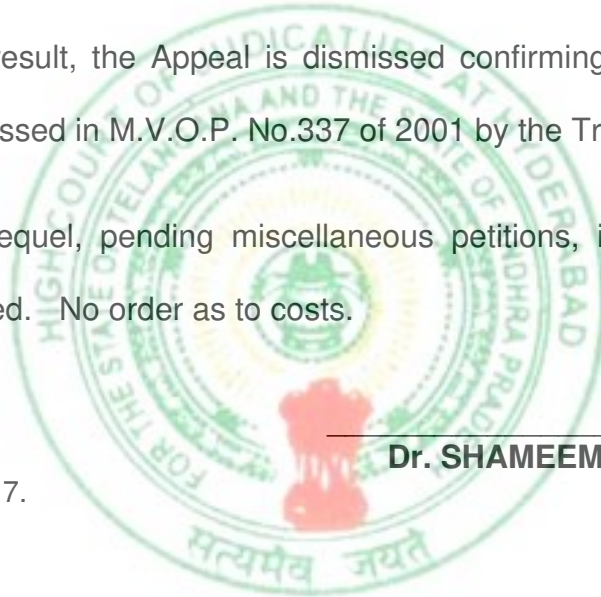
case record produced before the Tribunal, the petitioner suffered injuries in the accident. But there is no evidence to believe that the petitioner suffered injuries as mentioned in Ex.X.1-X-ray films and Ex.X.2-case sheet. The same are contradicted and not in consonance with the oral evidence and other medical record produced by the petitioner, particularly Ex.A.2-wound certificate. Under these circumstances, there is nothing to enhance the compensation as contended by the petitioner. The Tribunal elaborately dealt the issues and answered them basing on the entire evidence on record. No infirmity is found in the said finding. The appeal is devoid of merits and it is liable to be dismissed.

13. In the result, the Appeal is dismissed confirming the order dated 29.04.2005 passed in M.V.O.P. No.337 of 2001 by the Tribunal.

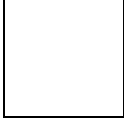
14. As a sequel, pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

Date: 27.10.2017.
Dsh/siva

Dr. SHAMEEM AKTHER, J



HON'BLE Dr. JUSTICE SHAMEEM AKTHER



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Date.27.10.2017

DSH