

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.43 OF 2006

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') aggrieved by the order dated 25.01.2005 passed in O.P. No.601 of 1998 on the file of the Chairman, Motor Accident Claims Tribunal-cum-III Additional District Judge (Fast Track Court), Nizamabad (for short, 'the Tribunal'), whereby the Tribunal granted Rs.47,000/- with interest at 9% per annum as compensation in favour of the appellant, as against the claim of Rs.1,00,000/- for the injuries sustained by him in a motor accident occurred on 03.01.1998 due to the rash and negligent driving of the driver of the lorry tipper bearing registration No.AP 1T 1999.

2. Heard the learned counsel for the appellant-claimant and the learned Standing Counsel for the 2nd respondent-insurer, apart from perusing the material on record. The appeal against the 1st respondent-owner of the offending vehicle was dismissed for default vide the order dated 27.04.2016. However, dismissal of the appeal for default against the 1st respondent-owner of the offending 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

¹ 2001(1) ALT 495 (D.B.)

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."

3. Learned counsel for the appellant-claimant would contend that the appellant-claimant suffered two grievous injuries and two simple injuries; the Tribunal awarded only Rs.47,000/- for the injuries and other heads, which is meagre; the Tribunal had not granted any amount towards attendant charges, extra nourishment, etc.; and ultimately, prayed to allow the appeal by enhancing the compensation as claimed.

4. On the other hand, learned Standing Counsel for the 2nd respondent-insurer would contend that the Tribunal had taken all the facts into consideration and granted just and reasonable amount as compensation; the grievous injuries are not supported by any medical evidence or any other documents; there are no circumstances to enhance the same; and ultimately, prayed to dismiss the appeal.

5. There is no dispute with regard to the appellant-claimant suffering injuries in the motor accident occurred on 03.01.1998 due to the rash and negligent driving of the driver of the offending lorry bearing registration No.AP 1T 1999. The only point that falls for consideration is, whether the appellant-claimant is entitled for enhancement of compensation?

6. The appellant-claimant averred that he suffered two grievous injuries, i.e., fracture of left patella and right clavicle bone and two simple injuries and he was treated in Government Hospital for 40 days. In support of her case, he deposed as P.W.1 and got examined the doctor as P.W.2 and exhibited 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, Ex.A.4-disability certificate, Ex.A.5-insurance policy and Exs.A.6 to A.44-bunch of medical bills. On behalf of the 2nd

respondent-insurer, Ex.B.1-copy of insurance policy of the offending lorry was marked.

7. The Tribunal after analysing the entire oral and documentary evidence on record, assessed compensation at Rs.46,188/-, i.e., Rs.15,000/- for fracture to the patella, Rs.10,000/- for fracture of clavicle bone, Rs.6,000/- for two simple injuries Rs.5,000/- towards pain and suffering, Rs.5,000/- towards loss of earnings and Rs.5,188/- towards medical expenses, and rounded it to Rs.47,000/- and granted the same with interest at 9% per annum from the date of petition till date of deposit. The Tribunal, while dealing with the assessment of compensation, made an observation in view of the directions of given by this Court in C.M.A. No.3518 of 2004 dated 09.11.2004 between Dasari Narsimlu @ Narsaiah – appellant and Sri Venkateshwar Rai and another – respondents, that P.W.2 is giving disability certificates very liberally on mere clinical examination of the patients without taking X-rays and reports from radiologists. Admittedly, no X-ray films are filed and no case sheet is filed to substantiate the contention on behalf of the appellant-claimant that he suffered 40% disability and that there was skin grafting. Under these circumstances, there is nothing to take a different view. The appeal is devoid of merit and it is liable to be dismissed.

8. In the result, the appeal is dismissed confirming the order dated 25.01.2005 passed by the Tribunal in O.P. No.601 of 1998. Miscellaneous Petitions pending, if any, shall stand closed. There shall be no order as to costs.

Date: 02.07.2018
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Dr. SHAMEEM AKTHER, J