

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.2993 OF 2005

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') aggrieved by the order dated 13.04.2005 passed in O.P. No.660 of 2005 on the file of the Chairman, Motor Accident Claims Tribunal-cum-VI Additional District Judge (Fast Track Court), East Godavari at Rajahmundry (for short, 'the Tribunal'), whereby the Tribunal granted Rs.1,00,000/- with interest thereon at 6% per annum from the date of petition till date of deposit towards compensation to the petitioner for the injuries sustained by him in a motor accident occurred on 30.04.2001. The Divisional Manager, National Insurance Company Limited, Kakinada, East Godavari District, who is the appellant herein, is the 3rd respondent in the original petition. Respondent Nos.1 and 2 herein are the driver and owner of the crime vehicle and respondent No.3 herein is the petitioner in the original petition.

2. For the sake of convenience, the parties hereinafter are referred to, as they were arrayed before the Tribunal in the original petition.

3. Heard the learned Standing Counsel for the appellant-insurer of the crime vehicle and the learned counsel for respondent No.3-claimant. Though served with notice, none appeared on behalf of respondent Nos.1 and 2-driver and owner of the offending vehicle.

4. Brief facts of the case are that on 30.04.2001 at about 11-45 a.m., the petitioner as the cleaner of the van bearing registration No.AP 37T 3033 along with the 1st respondent-driver started at Ramachandrapuram at the instructions of the 2nd respondent-owner of the van to proceed to Chelluru, Machavaram village, and when they reached Pasalapudi Centre, Main Road, suddenly the 1st respondent-driver drove the van in a rash and negligent manner and while overtaking another vehicle, which was coming opposite to the van, lost

control over it, as a result of which, the van turned turtle into the roadside canal, due to which, the petitioner sustained injuries, was shifted to Government Hospital, Ramachandrapuram for treatment and later to Government General Hospital, Kakinada for expert treatment. Due to the accident, the petitioner became permanently disabled and lost his job and income. Therefore, the petitioner laid claim against respondent Nos.1 to 3, who are the driver, owner and insurer of the offending van.

5. Respondent No.1-driver of the offending vehicle remained *ex parte* before the Tribunal. Respondent Nos.2 and 3-owner and insurer of the offending vehicle filed counters denying all the allegations made in the petition and contended that the claim of compensation made by the petitioner is highly excessive, the petitioner was travelling as an unauthorised passenger but not as the cleaner of the offending vehicle and the petitioner is not entitled to claim any compensation.

6. The Tribunal after considering the evidence of P.Ws.1 and 2 and the documents Exs.A.1 to A.6 marked on behalf of the petitioner and the evidence of R.Ws.1 and 2 and the documents Exs.B.1 to B.4 marked on behalf of the respondents, though determined the compensation at Rs.3,28,500/- payable to the petitioner, granted Rs.1,00,000/- with interest at 6% per annum towards compensation to the petitioner vide the order dated 13.04.2005, directing respondent Nos.1 to 3 to pay the same jointly and severally. Challenging the said order, the insurer of the crime vehicle preferred this appeal.

7. Learned counsel for respondent No.3-insurer (appellant herein) would submit that the Tribunal erred in assessing the disability suffered by the petitioner as 100% and calculating the compensation therefor at Rs.2,88,000/- , which is exorbitant; the Tribunal ought to have assessed the disability at 25%

only; the amounts awarded under other heads are also excessive; and ultimately, prayed to reduce the compensation granted by the Tribunal to the petitioner.

8. On the other hand, learned counsel for the petitioner (respondent No.3 herein) would contend that the Tribunal had rightly assessed the compensation in view of the injuries suffered by the petitioner; there are no circumstances to interfere with the impugned award; and ultimately, prayed to dismiss the appeal.

9. In view of the contentions put forth by both sides, the point for determination is, whether the compensation awarded vide order dated 13.04.2005 by the Tribunal in O.P. No.660 of 2001 in favour of the petitioner is liable to be reduced?

10. **POINT:** The evidence of P.W.2, who provided treatment to the petitioner, reveals that the petitioner was admitted on 30.04.2001 in Government General Hospital, Kakinada, with fracture injuries, he conducted operation to the left hand on 01.05.2001 and he found that there was an extensor tender injury associated with the fractures of 4th and 5th metacarpal bones of left hand. The petitioner was discharged from the hospital on 08.05.2001 with an advice to come to OP (Ortho) after ten days; that on 28.10.2004, P.W.2 once again examined the petitioner and found that there was deformity and restriction of movements of left little finger and the said fracture is grievous in nature and it is difficult to the petitioner to carry heavy weights and to grip wrench. P.W.2-doctor further stated that the petitioner would not have attended his normal duties for three months and prescribed medicines available in the Government General Hospital, Kakinada. In the course of cross-examination, P.W.2 admitted that the deformity caused to the petitioner could have been reduced, if the petitioner had undergone physiotherapy and the opinion given by him was a clinical one. There are other documents to show that the petitioner sustained two fractures to 4th and

5th metacarpal of left bones of left hand. P.W.2-doctor did not give percentage of disability. As per the evidence on record, the petitioner-injured was a cleaner. The Tribunal had taken a view that the petitioner suffered 100% disability on account of the injuries sustained by him in the subject accident. Admittedly, there is no medical opinion nor the petitioner-injured was examined by the Medical Board to assess the disability suffered by him. As seen from the oral and documentary evidence, there were fractures of 4th and 5th metacarpal bones of the left hand of the petitioner. In no circumstances, it would cause 100% functional/permanent disability. Therefore, the assessment of compensation payable to the petitioner taking 100% permanent disability is erroneous. Therefore, the petitioner is not entitled to any amount towards permanent disability.

11. The Tribunal had assessed compensation payable to the petitioner as Rs.3,28,000/-, i.e., Rs.2,000/- towards transport charges, Rs.2,000/- towards attendant charges, Rs.5,000/- towards medical expenses, Rs.4,500/- towards loss of earnings, Rs.25,000/- towards pain, suffering and mental agony and Rs.2,88,000/- towards permanent disability. As the petitioner-injured had claimed Rs.1,00,000/- towards compensation, the Tribunal restricted the compensation to the petitioner to Rs.1,00,000/- and awarded the same. As far as the assessment of compensation granted by the Tribunal towards 100% disability is concerned, the petitioner is not entitled to such amount towards permanent disability. The amounts assessed by the Tribunal on other heads, such as, Rs.2,000/- towards transportation charges to the hospital, Rs.2,000/- towards attendant charges and Rs.5,000/- towards medical expenses are required to be awarded. The Tribunal granted Rs.4,500/- towards loss of earnings, which is enhanced to Rs.6,000/-, i.e., at the rate of Rs.3,000/- per month for two months. The petitioner is also entitled to Rs.2,000/- towards extra nourishment charges. The Tribunal granted Rs.25,000/- towards pain and suffering and mental agony. This amount is

enhanced to Rs.33,000/-, which includes compensation for the above heads including injuries. Thus, in all, the petitioner is entitled for total sum of Rs.50,000/- towards compensation with interest at 9% per annum from the date of petition till date of deposit, as against the sum of Rs.1,00,000/- granted by the Tribunal.

12. In the result, this appeal is partly allowed modifying the order dated 13.04.2005 passed in O.P. No.660 of 2001 on the file of the Chairman, Motor Accident Claims Tribunal-cum-VI Additional District Judge (Fast Track Court), East Godavari at Rajahmundry, and the amount of compensation granted by the Tribunal is reduced from Rs.1,00,000/- to Rs.50,000/- with interest at 9% per annum from the date of petition till date of deposit. Miscellaneous Petitions pending, if any, shall stand closed. There shall be no order as to costs.

Date: 07.06.2018
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Dr. SHAMEEM AKTHER, J