

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.595 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 05.01.2005 passed in M.V.O.P. No.256 of 2002 on the file of the Chairman, Motor Accident Claims Tribunal-cum-V Additional Chief Judge, Vijayawada (for short, 'the Tribunal'), whereby the Tribunal granted Rs.34,500/- with interest at 9% per annum towards compensation to the appellant herein for the injuries sustained by him in a road accident occurred on 22.11.2001.

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 17.11.2017. 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 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."

¹ 2001(1) ALT 495 (D.B.)

3. Learned counsel for the appellant-claimant would contend that the Tribunal granted meagre amount towards compensation as against the claim of Rs.2,00,000/-; the Tribunal had not granted compensation towards loss of earnings, etc.; and ultimately, prayed to enhance the compensation as prayed for.

4. On the other hand, learned Standing Counsel for the 2nd respondent-insurer would contend that the Tribunal rightly assessed compensation of Rs.34,500/- basing on the evidence on record; there is nothing to enhance the compensation; and ultimately, prayed to dismiss the appeal.

5. In view of the contentions raised by both sides, the point for determination is, whether the appellant-petitioner is entitled for enhancement of compensation?

6. To substantiate the case, the petitioner was examined as P.W.1, got examined the doctor as P.W.2 and got marked Ex.A.1-F.I.R., Ex.A.2-wound certificate, Ex.A.3-discharge certificate, Ex.A.4-medical bills (52), Ex.A.5-prescription chits (18), Ex.A.6-prescription chits (10), Ex.A.7-laboratory report and Ex.A.8-X-rays (5). As per the evidence of P.W.2-doctor and the medical record produced before the Court, the petitioner suffered one grievous injury, i.e., fracture of right leg, and he was hospitalised for 15 days. There is no mention of other injuries in Ex.A.2-wound certificate as well as in the evidence of P.W.2-doctor. Therefore, it can be held that the petitioner suffered one grievous injury, i.e., fracture of right leg. The Tribunal granted Rs.15,000/- towards medicines, transport and nourishment charges, Rs.18,000/- towards pain and suffering and Rs.1,500/- towards loss of earnings. In all, the Tribunal granted Rs.34,500/- to the petitioner as compensation.

7. When there is a fracture of right leg of the petitioner, certainly, it can be easily concluded that he did not work for six months. The petitioner was an earning member. As the accident occurred on 22.11.2001, the earnings of the petitioner can be taken as Rs.1,500/- per month. Therefore, the petitioner is entitled to a sum of Rs.9,000/- towards loss of earnings for six months at the rate of Rs.1,500/- per month. This amount of Rs.9,000/- is required to be granted in addition to the amount of Rs.34,500/- granted by the Tribunal. Therefore, the appellant-petitioner is entitled to a total sum of Rs.43,500/- as compensation. The Tribunal granted 9% per annum on the amount of Rs.34,500/-. The appellant-petitioner is entitled to the interest at 7.5% per annum on the enhanced amount of Rs.9,000/-.

8. In the result, this appeal is partly allowed and the order dated 05.01.2005 passed by the Tribunal in M.V.O.P. No.256 of 2002, is modified and the amount of compensation of Rs.34,500/- granted by the Tribunal is enhanced to Rs.43,500/-. The appellant-petitioner is entitled to interest at 7.5% per annum on the enhanced amount of Rs.9,000/- from the date of petition till date of deposit. The appellant-petitioner is permitted to withdraw the entire amount of compensation.

9. Miscellaneous Petitions pending, if any, shall stand closed. There shall be no order as to costs.

Date: 20.06.2018
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Dr. SHAMEEM AKTHER, J