

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
CIVIL MISCELLANEOUS APPEAL No.2026 OF 2004

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') aggrieved by the order dated 23.04.2004 passed in M.V.O.P. No.223 of 2000 on the file of the Chairman, Motor Accident Claims Tribunal-cum-IV Additional District Judge, Guntur (for short, 'the Tribunal'), whereby the Tribunal granted Rs.43,000/- with interest at 9% per annum as compensation in favour of the appellant-claimant, as against the claim of Rs.1,60,000/- for the injuries sustained by him in a motor accident occurred on 29.01.2000 due to the rash and negligent driving of the driver of the tipper bearing registration No.AP 9V 6819.

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 29.11.2017. 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

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 one grievous injury and one simple injury and the Tribunal granted Rs.24,000/- towards 10% disability; the Tribunal granted meagre amounts of Rs.2,000/- towards pain and suffering, Rs.2,000/- towards nutritious food, Rs.10,000/- towards loss of future amenities and Rs.5,000/- towards medical expenses and treatment; ultimately, prayed to enhance the compensation as claimed.

4. On the other hand, the 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 compensation; there are no circumstances to enhance the compensation; and ultimately, prayed to dismiss the appeal.

5. There is no dispute with regard to the appellant-claimant suffering injuries in a motor accident occurred on 29.01.2000 due to the rash and negligent driving of the driver of the tipper bearing registration No.AP 9V 6819. The short point that falls for determination is, whether the appellant-claimant is entitled for enhancement of compensation?

6. The contention of the appellant-claimant is that he suffered fracture to the left hip joint dislocation in the subject accident occurred on 29.01.2000, pin traction was done, his left leg was shortened, he was limping and he took treatment in the hospital as an inpatient for 25 days. To substantiate the contentions, the appellant-claimant deposed as P.W.1 and examined the doctor as P.W.2 and got marked Ex.A.1-certified copy of F.I.R., Ex.A.2-certified copy of charge sheet, Ex.A.3-certified copy of Motor Vehicles Inspector's report, Ex.A.4-

certified copy of wound certificate, Ex.A.5-OP chit issued by the Government General Hospital, Guntur, Exs.A.6 to A.8-cash bills and Ex.X.1-case sheet. On behalf of the 2nd respondent-insurer, R.W.1 was examined and Ex.B.1-insurance policy, Ex.B.2-letter, Ex.B.3-postal acknowledgment and Ex.B.4-unserved cover were marked.

7. As per the evidence of P.W.2-doctor, the appellant-claimant was admitted in the hospital on 30.01.2000, on the same day, pin traction was done to the left leg of the appellant and he was discharged on 24.02.2000. The appellant-claimant was hospitalised as an inpatient for 25 days. As per Ex.A.4-certified copy of wound certificate, the appellant suffered dislocation of the left femur, which was grievous in nature. The appellant also suffered one simple injury. P.W.2-doctor specifically deposed that the appellant was able to walk without support but there is restriction of movement by 10% to 15%. There is also other medical record to show the injuries and the treatment undergone by the appellant. The Tribunal came to the conclusion that there is 10% disability, took multiplier '16' and annual income as Rs.15,000/- and assessed the compensation towards disability at Rs.24,000/-. The appellant is aged 19 years at the time of the accident. The suitable multiplier is '18' as per the decision of the Hon'ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation**². So, the compensation towards 10% disability comes to Rs.27,000/- (Rs.15,000/- x 18 x 10%) and the same is granted as against Rs.24,000/- granted by the Tribunal. The Tribunal granted Rs.2,000/- towards pain and suffering, which is on lower side for the one grievous and one simple injuries suffered by the appellant. So, the same is enhanced to Rs.12,000/-. The Tribunal granted Rs.2,000/- towards nutritious food, which is also meagre amount. The appellant-claimant was hospitalised for 24 days and suffered one grievous injury. Generally, it takes five months time to recover from the injuries suffered by the

² AIR 2009 SC 3104

appellant. Therefore, a sum of Rs.10,000/- is granted for nutritious food as against Rs.2,000/- granted by the Tribunal. The amounts granted by the Tribunal for Rs.10,000/- towards loss of future amenities and Rs.5,000/- towards medical expenses and treatment are maintained. Thus, in all the appellant-claimant is entitled to Rs.64,000/- as against Rs.43,000/- granted by the Tribunal. The Tribunal awarded interest at the rate of 9% per annum on the amount granted as compensation from the date of petition till date of deposit. As per the settled legal position, the appellant-claimant is entitled for interest at the rate of 7.5% per annum only on the enhanced amount of compensation.

8. In the result, this appeal is allowed in part and the order dated 23.04.2004 passed by the Tribunal in M.V.O.P. No.797 of 2003 is modified and the amount of compensation of Rs.43,000/- granted by the Tribunal is enhanced to Rs.64,000/-. The appellant-claimant is entitled to interest at 7.5% per annum on the enhanced amount from the date of petition till date of deposit. The appellant-claimant is permitted to withdraw the entire amount.

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

Dr. SHAMEEM AKTHER, J

Date: 03.07.2018
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