

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

C.M.A.No.4223 OF 2004

JUDGMENT:

This appeal is filed by the appellant-claimant under Section 173 of the M.V. Act, aggrieved by the award, dated 03.01.2003, in O.P.No.514 of 1999, passed by the Motor Accident Claims Tribunal-cum-Chief Judge, City Civil Court, Hyderabad, for enhancement of compensation.

2. Heard the learned counsel for the appellant, the learned standing counsel for the Insurance Company and perused the record.

3. Learned counsel for the appellant would submit that the appellant suffered compound comminuted fracture and underwent treatment in NIMS hospital between 15.12.1998 to 01.02.1999. The appellant was a Class II contractor and drawing monthly income of Rs.7,000/-. The Tribunal had taken monthly income as Rs.2,000/- and awarded an amount of Rs.6,000/- towards loss of earnings, which is meagre. The appellant also underwent physiotherapy. Ex.A8-physiotherapy bill would substantiate the same. No compensation was awarded under this head. For pain and suffering, meagre compensation was awarded and ultimately, prayed to enhance the compensation to Rs.3,50,000/- as claimed.

4. On the other hand, learned standing counsel for the Insurance Company would submit that the Tribunal had taken all the factors into consideration and awarded compensation of Rs.58,500/- with interest at 9% p.a., which is just and reasonable. There are no circumstances

to interfere with the same and ultimately, prayed to dismiss the appeal.

5. In view of submissions made by both sides, the point for determination is whether the appellant is entitled for enhancement of compensation as prayed for?.

6. The appeal against respondent No.1-owner of the vehicle was dismissed on 08.02.2016 for default. However, dismissal of the appeal for default against respondent No.1-owner of the 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."

7. There is no dispute with regard to suffering of injuries by the appellant due to rash and negligent driving of the mini Auto bearing No. AP 13 T 167 by its driver. As per the medical evidence on record, the appellant sustained compound comminuted fracture and admitted in

¹ 2001(1) ALT 495 (D.B.)

NIMS hospital on 15.12.1998 and an operation was conducted on 30.12.1998 and thereafter, he was discharged from the hospital on 01.02.1999. The appellant was an inpatient for about one and half month and also took physiotherapy. There is specific evidence of P.W.2-doctor to that effect. There is also specific evidence of doctor that the appellant suffered compound comminuted fracture of right tibia with paralysis of right peroneal nerve and also sustained fracture of distal radius. There is also evidence with regard to suffering 5% disability and also spending some amount towards medical expenses.

8. The Tribunal while dealing with claim petition had taken nature of injuries suffered by the appellant and medical expenses incurred, granted total compensation of Rs.58,500/- on different heads. While granting compensation towards loss of earnings, the Tribunal took the monthly income of the appellant as Rs.2,000/- and granted Rs.6,000/- towards loss of earnings for a period of three months. There is doctor's evidence and other evidence with regard to appellant suffering 5% disability by suffering grievous injuries. Therefore, it can safely be concluded that he was prevented from working for a period of six months. As per Ex.A9 and the evidence of P.W.1, the appellant was a contractor and earning Rs.7,000/- per month. However, no certificate is filed to substantiate the said monthly earnings. In view of the evidence on record, the monthly earnings of the appellant can be taken as Rs.5,000/-. So an amount of Rs.30,000/- is granted towards loss of earnings at the rate of Rs.5,000/- per month.

9. It is contended that the appellant spent Rs.8,000/- and odd towards expenses for physiotherapy

and the same was not considered by the Tribunal. There is evidence of doctor to establish that the appellant was subjected to physiotherapy for his lower right leg. So an amount of Rs.8,000/- can also be granted towards expenditure incurred by the appellant for physiotherapy. As far as grant of compensation towards medical expenses and disability and other scores is concerned, it is based on evidence on record. There need not be any variation.

10. In the result, the compensation awarded by the Tribunal is enhanced from Rs.58,500/- to Rs.90,500/-. The appellant is entitled to interest at 7.5% p.a., on the enhanced compensation amount from the date of petition till the date of deposit. On deposit, the appellant is entitled to withdraw the same.

11. Accordingly, the Appeal is partly allowed. No order as to costs. Miscellaneous petitions, if any pending in this appeal shall stand closed.

DATED: 12-06-2018
Hsd

DR.SHAMEEM AKTHER, J