

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.2732 OF 2004

JUDGMENT:

This appeal is filed by the appellant-claimant under Section 173 of the M.V. Act, aggrieved by the judgment, dated 18.09.2003, in M.V.O.P.No.386 of 1998, passed by the I Addl. District Judge, Guntur, 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 no compensation was granted towards pain and suffering and the Tribunal took the monthly income of the appellant as Rs.1200/-, which is meagre. The appellant was a driver and workman. The Tribunal also not granted medical expenses as exhibited in Ex.A4 and ultimately, prayed to enhance the compensation.

4. On the other hand, learned standing counsel for the Insurance Company would submit that while dealing with Ex.A4-medical bills, the Tribunal had assigned reasons i.e., one of the documents was to a tune of Rs.17,250/- on the letter-head, but not on a stamped receipt and therefore the Tribunal has not taken the same into consideration. However, the Tribunal granted adequate compensation with regard to injuries and also towards medical expenses and ultimately, prayed to dismiss the appeal.

5. 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."

6. There is no dispute with regard to suffering of injuries by the appellant due to rash and negligent driving of the private bus bearing No. AP 9 U 5969 by its driver on 21.01.1998. The evidence of P.Ws. 1 and 2, who are injured and the Doctor, establishes that the claimant suffered disability. Admittedly, the claimant was not examined by the competent Medical Board to believe that he suffered 20% disability. P.W.2 treated the claimant as in-patient between 21.1.1998 to 13.3.1998 for fractures etc., However, in view of X-rays and other medical record, the claimant can be granted an amount of Rs.47,440/- instead of Rs.37,440/- granted by the Tribunal towards future loss

¹ 2001(1) ALT 495 (D.B.)

of earnings suffered by the claimant. The Tribunal granted adequate compensation towards medical bills (including Ex.A4). There is justification in granting the said amount towards expenses incurred. Further, the Tribunal granted an amount of Rs.30,000/- towards two fracture injuries and other injuries. The same is justified in view of the evidence on record. However, the Tribunal has not granted any amount towards loss of earnings during the period in which the claimant was bed-ridden and did not work. The said period can be taken as 5 months, and the loss of monthly income can be taken as Rs.2,000/-. Hence, the claimant is entitled to Rs.10,000/- (Rs.2,000/- x 5 months) towards loss of earnings. In all, the claimant is entitled to compensation of Rs.1,10,326/-. As far as rate of interest is concerned, the Tribunal granted interest @ 6% per annum. However, as per the settled legal principles, it requires to be enhanced on the enhanced compensation amount.

7. In the result, the compensation awarded by the Tribunal is enhanced from Rs.90,326/- to Rs.1,10,326/-. 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 realization. The other conditions imposed by the Tribunal remained un-changed. On deposit, the appellant is entitled to withdraw the same.

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

DR.SHAMEEM AKTHER, J

DATED: 11-06-2018

Hsd