

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
CIVIL MISCELLANEOUS APPEAL No.2812 of 2004

JUDGMENT:

Dissatisfied with the quantum of compensation of Rs.60,000/- awarded by the Chairman, Motor Accidents Claims Tribunal-cum-Additional District Judge, Nizamabad ('the Tribunal' for brevity), vide order, dated 05.06.2003, passed in O.P.No.259 of 2001, as against the total claim of Rs.1,50,000/-, the claimant preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 ('the Act', for brevity) seeking enhancement of compensation.

2. Heard the learned counsel for the appellant-claimant, the learned Standing Counsel for United India Insurance Company Limited representing the 2nd respondent and perused the record. The appeal against respondent No.1-owner is 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 others¹, 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

¹ 2001(1) ALT 495 (D.B.)

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."

3. The learned counsel for the appellant-claimant would submit that the compensation awarded by the Tribunal is inadequate. The Tribunal granted a meagre amount of Rs.60,000/- as compensation as against a total claim of Rs.1,50,000/- and ultimately prayed to enhance the compensation as prayed for.

4. On the other hand, the learned Standing Counsel for United India Insurance Company Limited representing the 2nd respondent would submit that the Tribunal had granted adequate compensation under all admissible heads. There are no circumstances to interfere with the same and ultimately prayed to dismiss the appeal.

5. There is no dispute that the appellant-claimant sustained injuries in a road accident that occurred on 02.11.1996 due to the rash and negligent driving of the driver of the jeep bearing registration no.AP-25-D-2701. As seen from the entire evidence on record the appellant-claimant suffered the following injuries in the subject road accident.

1. Fracture of Clavical
2. Fracture of right ribs.
3. Fracture of left leg tibia.

The ocular evidence of P.W.2—Dr.T.Narsing Rao, M.S.(ortho), Surgeon, supported the same. Further, there is also medical record to substantiate the same. Ex.A.7 is the Disability Certificate of the appellant-claimant, wherein, it is mentioned that the appellant-claimant suffered 50% disability due to the above injuries. As per the evidence on record, the appellant-claimant was doing business in paddy. He suffered three grievous injuries in the subject road accident. There is also medical evidence to show that he suffered 50% disability. The Tribunal awarded a sum of Rs.50,000/- as compensation for injuries, Rs.5,000/- towards medicines and for extra nourishment and Rs.5,000/- towards past and future pain and sufferings. In all, the appellant-claimant was granted compensation of Rs.60,000/-. However, no amount of compensation was granted to the appellant-claimant for loss of earnings. There is omission on the part of the Tribunal in not granting compensation towards loss of earnings. As per the evidence on record, it is concluded that the appellant-claimant was a working person and he was prevented from attending to his work for a period of six months owing to the injuries suffered by him in the subject road accident. So, this Court deems it appropriate to award compensation of Rs.18,000/- towards loss of earnings (Rs.3,000/- per month for 6 months), in addition to the compensation awarded by the Tribunal. Thus, the appellant-claimant is entitled for a total compensation of Rs.78,000/- (Rupees seventy eight thousand only) (Rs.50,000 + Rs.5,000/- + Rs.5,000/- + Rs.18,000/-). The Tribunal awarded interest at

the rate of 9% per annum from the date of petition till realisation, which appears to be just and reasonable in the facts and circumstances of the case.

6. Accordingly, this appeal is allowed in part modifying the order, dated 05.06.2003, passed by the Tribunal, enhancing the compensation from Rs.60,000/- to Rs.78,000/- with interest at the rate of 9% per annum from the date of petition till realisation. On deposit of the compensation, the appellant-claimant is permitted to withdraw the entire amount and interest. The other terms of the Order under challenge remain unaltered.

Miscellaneous Petitions pending, if any, shall stand closed.

No order as to costs.

04th June, 2018
Bvv

Dr. SHAMEEM AKTHER, J

