

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.1001 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 07.01.2005 passed in M.V.O.P. No.553 of 2003 on the file of the Chairman, Motor Accident Claims Tribunal-cum-II Additional District Judge, Vijayawada (for short, 'the Tribunal'), whereby the Tribunal granted Rs.1,95,000/- with interest at 9% per annum towards compensation to the appellant herein for the injuries sustained by him in a road accident occurred on 09.02.2003.

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.6,00,000/-; the Tribunal had not granted compensation towards extra nourishment, attendant charges, 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.1,95,000/- 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-copy of F.I.R., Ex.A.2-copy of wound certificate, Ex.A.3-copy of insurance policy, Ex.A.4-copy of charge sheet, Ex.A.5-bunch of medical bills, Ex.A.6-bunch of prescriptions, Ex.A.7-insurance policy, Ex.A.8-driving licence, Ex.A.9-driving licence of the driver of the offending vehicle, Ex.A.10-C-book particulars of offending vehicle, Ex.A.11-Tax receipts, Ex.A.12-scanning report and Ex.A.13-clinical notes issued by Nagarjuna Hospital. The petitioner also got marked Ex.X.1-case sheet and Ex.X.2-X-rays. The 2nd respondent-insurer got marked Ex.B.1-copy of insurance policy of the offending vehicle.

7. There is no dispute with regard to appellant-claimant sustaining injuries in the accident, which occurred on 09.02.2003 due to rash and negligent driving of the driver of the offending vehicle, i.e., lorry bearing registration No.AP

9W 5819. The dispute is only with regard to the assessment and grant of compensation. As per the evidence of P.W.2-doctor and the medical evidence, the petitioner suffered four grievous injuries, i.e., fracture of both bones of left leg, fracture of left femur and fracture of proximal phalanx of left great toe. The evidence of P.W.2-doctor reveals that the petitioner took treatment as an inpatient in their hospital for three fractures and one grievous injury and surgeries were done for the said injuries. The Tribunal while dealing with the injuries, medical expenses, etc., awarded Rs.75,000/- for three fractures, Rs.20,000/- for one grievous injury and Rs.1,00,000/- towards medical expenses. In all, the Tribunal granted Rs.1,95,000/- as compensation with interest at 9% per annum from the date of petition till realisation with costs. The Tribunal has not granted any compensation towards loss of earnings. The petitioner was an earning member. As the accident occurred on 09.02.2003, the earnings of the petitioner can be taken as Rs.2,500/- per month. Due to the three fractures and one grievous injury suffered by the petitioner, it can be safely concluded that he did not work for a period of six months. Therefore, the petitioner is entitled to a sum of Rs.15,000/- towards loss of earnings for six months at the rate of Rs.2,500/- per month. This amount of Rs.15,000/- is required to be granted in addition to the amount of Rs.1,95,000/- granted by the Tribunal. Therefore, the appellant-petitioner is entitled to a total sum of Rs.2,10,000/- as compensation. The Tribunal granted 9% per annum on the amount of Rs.1,95,000/-. The appellant-petitioner is entitled to the interest at 7.5% per annum on the enhanced amount of Rs.15,000/-.

8. In the result, this appeal is partly allowed and the order dated 07.01.2005 passed by the Tribunal in M.V.O.P. No.553 of 2003 is modified and the amount of compensation of Rs.1,95,000/- granted by the Tribunal is enhanced to Rs.2,10,000/-. The appellant-petitioner is entitled to interest at 7.5% per annum on the enhanced amount of Rs.15,000/- from the date of petition till

date of deposit. The appellant-petitioner is permitted to withdraw the entire amount of compensation. The other terms of the impugned order remain unaltered.

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

Dr. SHAMEEM AKTHER, J

Date: 20.06.2018
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