

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.1897 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 02.09.2004 passed in O.P. No.755 of 2001 on the file of the Chairman, Motor Accident Claims Tribunal-cum-IV Additional District Judge (Fast Track Court), Ranga Reddy District at L.B.Nagar (for short, 'the Tribunal'), whereby the Tribunal granted Rs.33,000/- with interest at 9% per annum as compensation in favour of the appellant, as against the claim of Rs.75,000/- for the injuries sustained by him in a motor accident occurred on 29.11.2000 due to the rash and negligent driving of the driver of the lorry bearing registration No.ABT 6669.

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 04.01.2012. 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 Tribunal had assessed meagre amount of compensation under various heads; the Tribunal had not granted any amount towards attendant charges, extra nourishment, etc.; and ultimately, prayed to allow the appeal by enhancing the compensation as claimed.

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

5. There is no dispute with regard to the appellant-claimant suffering injuries in the motor accident occurred on 29.11.2000 due to the rash and negligent driving of the driver of the offending lorry bearing registration No.ABT 6669. The only point that falls for consideration is, whether the appellant-claimant is entitled for enhancement of compensation?

6. The appellant-claimant averred that he suffered fracture of right foot, and other injuries in the subject accident and undergone treatment in Osmania General Hospital and he sustained permanent and partial disability and caused disfiguration to the right foot. In support of his case, he got examined his parents as P.Ws.1 and 2 and marked Ex.A.1-certified copy of F.I.R., Ex.A.2-certified copy of charge sheet, Ex.A.3-certified copy of medico legal record, Ex.A.4-medical bills (11 in number) for Rs.2,350/- and Ex.A.5-X-ray film. On behalf of the 2nd respondent-insurer, Ex.B.1-copy of insurance policy of the offending lorry was marked. The Tribunal after analysing the entire oral and

documentary evidence on record, granted Rs.20,000/- for grievous injury, Rs.3,000/- towards medical expenses and Rs.10,000/- towards loss of earnings. In all, the Tribunal granted Rs.33,000/- in favour of the appellant-claimant against respondent Nos.1 and 2, who are the owner and insurer of the offending lorry, with interest at 9% per annum from the date of petition till realisation. The appellant-claimant did not examine any doctor to prove the disability suffered by him and he did not file any disability certificate. The documents filed by the appellant-claimant show the fracture of right foot. The Tribunal had granted just and reasonable amount after analysing the entire material on record. There are no grounds to enhance the compensation. The appeal is devoid of merit and it is liable to be dismissed.

7. In the result, the appeal is dismissed confirming the order dated 02.09.2004 passed by the Tribunal in O.P. No.755 of 2001. Miscellaneous Petitions pending, if any, shall stand closed. There shall be no order as to costs.

Date: 29.06.2018
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Dr. SHAMEEM AKTHER, J

