

**HON'BLE SRI JUSTICE A. SHANKAR
NARAYANA**

M.A.C.M.A. No.115 OF 2006

JUDGMENT:

The instant appeal is preferred by the petitioner, having got dissatisfied with the award of Rs.61,500/-(Rupees sixty one thousand and five hundred) granted by the learned Chairman, Motor Accidents Claims Tribunal – cum – III Additional District Judge (Fast Track Court), Asifabad (for short 'the Tribunal') as compensation for the injuries sustained by him, by the order, dated 29-10-2005, in O.P. No.577 of 2003, as against the claim of Rs.2,00,000/-(Rupees two lakhs) laid under Section 166 (1)(a) and 163-A of the Motor Vehicles Act, 1988 (for short 'the Act') and Rule 455 of the Andhra Pradesh Motor Vehicles Rules, 1989 (for short 'the Rules').

2. The appellant herein is petitioner in the O.P. before the Tribunal, while respondent Nos.1 and 2, who are driver and owner of Van bearing registration No.AP 1U 3737, respectively, are respondent Nos.1 and 2, respectively.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the O.P. before the Tribunal.

4. The facts, in brief, are that on 05-04-2003, the petitioner claiming himself to be the cleaner of van bearing registration No.AP 1U 3737 owned by the 1st respondent and insured with the 2nd respondent, was proceeding from Kagaznagar to Maharashtra side and at about 11.45 P.M., when it reached near Hudkili bridge, since the driver of vehicle drove it in a rash and negligent manner,

it turned upside down, due to which, he sustained head injury. Even, Station House Officer, Sirpur Police Station, registered a case in Crime No.13 of 2003 against the driver of van. He, therefore, sought to grant the aforementioned amount as compensation against respondent Nos.1 and 2, being owner and insurer of the van, respectively.

5. Respondent No.1 remained *ex parte* before the Tribunal.

6. Respondent No.2 opposed the claim by raising various pleas.

7. Based on the pleadings, the Tribunal framed four issues about fixing responsibility for the accident. Even the Tribunal permitted the 2nd respondent – Insurance Company to put forth its defences under Section 170 of the Act.

8. During inquiry, on behalf of the petitioner, besides examining himself as PW.1, also examined the doctor, who treated him, from Nizams Institute of Medical Sciences (NIMS), Hyderabad as PW.2, his mother as PW.3, and the 1st respondent as PW.4 and marked (12) documents as Exs.A-1 to A-12. Copy of insurance policy was marked as Ex.A-13 on consent, and also marked Exs.C-1 to C-6. On behalf of the contesting respondent, none were examined.

9. The Tribunal taken up issue Nos.1 and 2 for common discussion and answered both issues in favour of the petitioner. On issue No.3, considering the evidence of PW.4 – B. Chandrashekar, who is the 1st respondent and the evidence of PW.2 –

Dr.M. Vijayasaradhi, working in NIMS Hospital and the description of injury finding place in Ex.A-3 – medico legal patient record showing the petitioner suffered head injury on right fronto temporo parietal region and he has undergone surgical intervention for the said injury, and also considering Exs.C-4 to C-6, medical bills, granted a sum of Rs.8,000/- towards loss of temporary earnings; a sum of Rs.3,500/- towards transportation; a sum of Rs.30,000/- towards medical expenses and a sum of Rs.20,000/- towards injury as such and, thus, a total sum of Rs.61,500/- was granted as compensation with interest at 7.5% per annum thereon, making respondent Nos.1 and 2 jointly and severally liable to pay the said amount.

10. On the ground that a meager compensation was awarded, the instant appeal is preferred contending in the grounds of appeal that despite petitioner sustaining fracture of right temporal bone and the evidence of PW.2 from NIMS Hospital showing that the petitioner was susceptible for neurological and psychological problems and despite expending Rs.60,000/- towards medical expenses, still, the Tribunal granted meager amount and, therefore, sought to grant the balance amount.

11. Heard Sri S. Surender Reddy, learned counsel for the appellant – petitioner. On behalf of the 1st respondent, none appears, despite service of notice. No representation for the 2nd respondent – Insurance Company.

12. Perused the order and the evidence, both oral and documentary, let in by the petitioner.

13. Evidence of PW.2 is material to assess whether the

Tribunal has granted just and reasonable compensation or otherwise. PW.2 is a Neuro Surgeon working in NIMS Hospital.

His evidence shows that on 06-04-2003, the petitioner was brought to his hospital having been earlier treated in M.G.M. Hospital, Warangal, and at the time of his admission in NIMS, the petitioner was found to be semi-conscious and the A.C.T. scan done revealed a fracture of temporal bone and thin EDH indicating extradural heamatoma and thin subdural heamatoma associated with cerebral edema with midline shift and the petitioner was taken up for emergency surgery and evacuation of E.D.H. and S.D.H. were done with the help of right fronto temporo parietal craniotomy and, thus, the petitioner has undergone surgical intervention on 07-04-2003. Of course, his evidence shows that after surgery, the petitioner improved in consciousness level and was discharged on 14-04-2003, with the advice to go over for regular follow up and to take drugs prescribed. But, his evidence shows that the petitioner may suffer seizures in future and there was also possibility with the injury that the petitioner may have loss of memory for variable period and may require long term anti-epileptics for his seizures control. Thus, the petitioner may have long term neuro psychological abnormalities whether temporary or permanent and testified the contents of Ex.A-3 medico legal patient record as spoken to in regard to Exs.A-9, A-11 and Exs.C-1 to C-6 issued from his hospital. He was, no doubt, cross-examined by the learned counsel for the 2nd respondent – Insurance Company, but except suggesting to him that the petitioner has not joined in their hospital and not taken any treatment, which was denied by him, nothing-else was brought out in his cross-examination useful to prove the case of Insurance Company. It is very clear that the petitioner has undergone the aforesaid surgical intervention, as

spoken to by PW.2 requiring long term susceptible neuro psychological abnormalities.

14. Thus, when kept in view, the evidence of PW.2 and the nature of injury sustained by the petitioner and the sufferance he has undergone, the amount of Rs.20,000/- granted by the Tribunal visualizing the same as it was a normal grievous injury is, certainly, on lower side. Therefore, the petitioner is granted a sum of Rs.70,000/- towards pain and suffering and the disability with which the petitioner has to suffer for quite considerable time, though, not permanent in nature. The Tribunal has granted Rs.8,000/- towards loss of temporary earnings, but the petitioner must have suffered with the said injury by taking anti-epileptics and other medication for a continuous period and he must have disabled to resume his avocation or pursue any other avocation, at least, for a period of one year, and, therefore, as against the amount of Rs.8,000/- granted by the Tribunal, a sum of Rs.24,000/- for 12 months @ Rs.2,000/- per month as fixed by the Tribunal is granted. So far as Rs.30,000/- granted by the Tribunal towards medical expenses is concerned, the same is confirmed. The amount of Rs.3,500/- granted by the Tribunal towards transportation is enhanced to Rs.6,000/-, keeping in view, that the petitioner must have visited PW.2 for follow up treatment for a considerable time. Towards extra nourishment, a sum of Rs.10,000/- is granted and towards attendant charges, a sum of Rs.5,000/- is awarded. Thus, in all, the petitioner is entitled to a sum of Rs.1,45,000/-(Rupees one lakh and forty five thousand) as compensation as against the amount of Rs.61,500/- granted by the Tribunal. Concerning rate of interest, the Tribunal granted it at 7.5% per annum and the same is maintained as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and**

others^[1].

15. In the result, the appeal is allowed in part, and the order, dated 29-10-2005, in O.P. No.577 of 2003, passed by the Tribunal is modified, enhancing the compensation to Rs.1,45,000/- (Rupees one lakh and forty five thousand) from Rs.61,500/- with interest thereon at 7.5% per annum from the date of petition till realization. There shall be no order as to costs.

16. As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

March 18, 2015.
Mgr

^[1]. 2013 ACJ 1403