

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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M.A.C.M.A.No.2068 of 2006

JUDGMENT:

Dissatisfied with the amount of Rs.75,000/- as compensation granted by the order dated 13.06.2006 in O.P.No.1190 of 2003 on the file of Chairman, Motor Accidents Claims Tribunal-cum-IV Additional District Judge (II FTC), Nalgonda (for short 'the Tribunal'), the instant appeal is preferred by the petitioner seeking enhancement.

2. The appellant herein is the petitioner in the original petition before the Tribunal, while the respondent herein is the respondent respectively.

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

4. The facts in brief are that on 25.07.2003 at about 03.30 PM, while the petitioner along with others was travelling as passenger in APSRTC bus bearing No.AP-10-Z-7029, belonging to the respondent, since the driver of the bus drove it in a rash and negligent manner and at high speed on Nalgonda to Narkatpally highway, while overtaking the lorry proceeding ahead of it in the outskirts of Narkatpally, it dashed another lorry bearing No.AP-24-U-2169, coming in opposite direction resulting in injuries to 30 passengers, who were shifted to Kamineni Hospital, Narkatpally, which was nearby to the place of accident. The SHO, Narkatpally, registered crime No.84/2003 under Sections 337 and 338 IPC against the driver of the bus. The petitioner claims that he was working as Excise Constable and used to earn Rs.12,000/- per month. He took treatment in Kamineni Hospital, Narkatpally and later in Niveditha Ortho Hospital, Hyderabad and underwent surgical intervention for implanting steel plates in his left leg. He further claims that he spent huge amounts towards medical expenses. Due to the injuries, he was on leave for loss of pay for six months and, therefore, sought Rs.2,00,000/- as compensation.

5. The respondent opposed the claim.

6. Basing on the above pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry, the petitioner himself was examined

as P.W.1 besides examining Dr. R.Sree Ramulu as PW.2 and Dr. Dutta Tamloorker as PW.3 and marked Exs.A.1 to A.8. On behalf of the respondent, none were examined and no documents have been marked.

7. The Tribunal, held issue No.1 in favour of the petitioner attributing negligence to the driver of the RTC bus, on account of which, the accident had taken place. On issue No.2, the Tribunal has taken into consideration the evidence of PWs.1 and 2 and Exs.A.3 to A.8 granted Rs.30,000/- towards grievous injuries and pain and suffering, Rs.25,000/- towards medical expenses, attendant charges, transport charges and extra nourishment, Rs.15,000/- towards 40% disability and Rs.5,000/- towards loss of expectation of life, loss of amenities including pleasure and loss of earnings. Thus, a total sum of Rs.75,000/- with interest @ 8% per annum.

8. It is the aforementioned order, which is under challenge, in the instant appeal preferred by the petitioner contending in the grounds of appeal that the Tribunal did not properly appreciate the evidence on record and the Tribunal did not take into consideration 40% disability, which was partial and permanent in nature and ought to have awarded Rs.1,00,000/- towards medical expenses and, therefore, sought to grant balance amount.

9. Heard Sri M. Rajamalla Reddy, learned counsel for the appellant, and Smt. D. Radhika, learned counsel for the respondent.

10. Perused the order under challenge and the evidence on record both, oral and documentary let in by the petitioner. Ex.A.3 is certified copy of medical certificate issued by the Assistant Civil Surgeon, Government Hospital, Nalgonda, showing the fractures to left leg both bones and loss of teeth. Ex.A.5 is the discharge card issued by Nivedita Orthopaedic Centre by specifically mentioning that it is not valid for medico-legal purposes. However, it shows the injuries described in Ex.A.3, that he was admitted on 29.07.2003 and discharged on 06.08.2003. The petitioner, though, claimed that he was on medical leave for six months, has not filed any proof to show that he was really on leave for six months and has not examined any one from the office to prove the leave proceedings. However, keeping in view, that the petitioner sustained two grievous injuries, the amount of Rs.30,000/- granted by the Tribunal is enhanced to Rs.50,000/- towards injuries and pain and suffering. The Tribunal, without appreciating the details contained in the medical bills marked as Exs.A.6 and A.7, granted Rs.25,000/- towards medical expenses, attendant charges,

transport charges including extra nourishment. Though, the learned counsel for the appellant contends that the medical bills under Ex.A.7 were not granted, there is no definite proof to show whether there is reimbursement facility and in fact the bills of Kamineni Hospital show the gender as female, though, some other bills show that they relate to the petitioner. So, keeping in view the same, the amount of Rs.25,000/- is enhanced to Rs.40,000/- in view of the discrepancy occurring in the bills. The Tribunal has awarded Rs.15,000/- towards 40% disability, there was no loss of income as the petitioner was continuing his employment on the date of filing the petition. However, keeping in view, that he must have been certainly on leave for considerable period though no proof is forthcoming, the amount of Rs.15,000/- towards 40% disability is without reference, whether it is functional disability or disability of the limb, as such, the same is enhanced to Rs.50,000/-. Concerning the amount of Rs.5,000/- granted by the Tribunal towards loss of expectation of life, loss of amenities of life including pleasure and loss of earnings, the same is enhanced to Rs.10,000/-. In view of the fact that no proof is forthcoming with regard to leave, since main limb is affected in the said accident, at least, for three months he would not have been able to attend his duties. Therefore, keeping in view, that he was earning Rs.12,000/- per month, Rs.36,000/- is awarded towards temporary loss of earnings for a period of three months. Thus, the petitioner is totally entitled to Rs.1,86,000/- as against Rs.75,000/- granted by the Tribunal, but, however, with interest at the rate of 7.5% per annum as per the decision of the Hon'ble Apex Court in ***Rajesh and others v. Rajbir Singh and others***.

11. In the result, the appeal is allowed in part and the award and decree dated 13.06.2006 passed by the Tribunal in O.P.No.1190 of 2003 is modified, enhancing the compensation to Rs.1,86,000/- from Rs.75,000/-, with interest at 7.5% per annum from the date of petition till realization, as against 8% per annum granted by the Tribunal, on the entire compensation, as per the decision of the Hon'ble Apex Court in ***Rajesh's case*** (Supra 1). There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

Date: 03.03.2015

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