

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

M.A. C.M.A. No.1347 OF 2005

Between:

Neyajuddin

.. Appellant

AND

Mazar Khan & another
Respondents

..

DATE OF JUDGMENT PRONOUNCED: 23-07-2015

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

1. Whether Reporters of Local newspapers

Yes

may be allowed to see the Judgments?

2. Whether the copies of judgment may be

No

Marked to Law Reporters/Journals.

1. Whether Their ladyship/Lordship wish

Yes

to see the fair copy of the Judgment?

**HONOURABLE SRI JUSTICE A. SHANKAR
NARAYANA**

M.A. C.M.A. No.1347 OF 2005

JUDGMENT:

Dissatisfied with the award of Rs.1,00,000/- towards compensation as against the claim of Rs.2,00,000/-, laid under Sections 166 and 163-A of the Motor Vehicles Act, 1988 (for short 'the Act'), seeking enhancement of the same, petitioner preferred this Civil Miscellaneous Appeal against the order and decree, dated 22-03-2005, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - District Judge, Adilabad, in O.P. No.568 of 2002.

2. The appellant herein is the petitioner in the O.P. before the Tribunal, while respondent Nos.1 and 2, who are owner and insurer, respectively, of the Jeep bearing No.MH-26-5962, are respondent Nos.1 and 2 respectively.

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

4. The facts, in brief, are that on 13-11-2001, while the petitioner, who was a 15 years old boy, was proceeding on the motorcycle bearing No.AP-25-B-8804, as a pillion rider, along with his Teacher, from Bodhan to Government Hospital, Bodhan, at about 12-30 p.m., near Bodhan Railway Gate, a Jeep bearing No.MH-26-5962, driven by its driver at high speed in a rash and negligent

manner, hit the motorcycle, due to which they fell down and the petitioner sustained fractures to his right knee, right leg and other parts of his person the body and he was shifted to Apollo Hospital, Hyderabad and was discharged on 24-11-2001. An amount of Rs.75,000/- was spent towards medical expenses. Hence, he sought Rs.2,00,000/- towards compensation against respondent Nos.1 and 2, owner and insurer, respectively, of the Jeep involved in the accident.

5. Before the Tribunal, respondent No.1, owner of the Jeep, remained *ex parte*.

6. Respondent No.2, insurer of the Jeep, resisted the claim of the petitioner by filing counter.

7. Based on the pleadings, the Tribunal framed three (3) issues in the direction of fixing responsibility for the accident.

8. During enquiry, petitioner examined himself as PW.1 and marked Exs.A-1 to A-58. On behalf of the insurer, no oral or documentary evidence was adduced.

9. The Tribunal, on appraisal of evidence let in by the petitioner held issue No.1 in favour of the petitioner and on issue No.2, though, observed that the Doctor, who treated the petitioner was not examined, still, keeping in view, Ex.A-55 and other evidence, awarded Rs.50,000/-

towards medical expenses, Rs.50,000/- towards injuries and thus, granted a total sum of Rs.1,00,000/- with interest at 9% per annum.

10. It is the aforesaid order, which is under challenge in the instant appeal, on the ground that the compensation granted by the Tribunal is on lower side, contending in the grounds of appeal that the Tribunal was not justified in not considering Exs.A-1 to A-58 and, in fact, Ex.A-55, discharge summary, proves that screws were fixed for the fractures sustained by the petitioner, in Apollo Hospital, Hyderabad, where he was treated as inpatient for eleven (11) days. Later, he was treated as inpatient in Hari Prasad Hospital, Hyderabad, for the fracture injuries of right knee, right femur and right patella and, therefore, sought to grant the balance amount.

11. Heard Sri S. Surender Reddy, learned counsel for the petitioner (appellant).

12. Despite sending notice to respondent No.1, owner of the Jeep, to the address provided by him, it was not served. However, he remained *ex parte* even before the Tribunal and suffered the decree, as such, his absence is of no consequence to decide the controversy in this appeal.

13. Despite service of notice on respondent No.2,

insurer of the Jeep, none appears on its behalf.

14. Perused the order under challenge and the oral and documentary evidence let in by the petitioner.

15. As seen from the oral and documentary evidence, the Doctor, who treated the petitioner, was not examined to prove the medical bills, but the bills issued by the hospital were not disputed by the other side before the Tribunal. Therefore, the amount of Rs.43,392/- covered by Ex.A-37 for the period from 13-11-2001 to 25-11-2001 and Rs.4,452/- covered by Ex.A-46 for the period from 18-02-2002 to 19-02-2002 cannot be rejected. Hence, the said amounts were granted besides granting Rs.6,084-65 paise towards purchase of medicines. Thus, the petitioner is entitled to Rs.53,930/- as against Rs.50,000/- granted by the Tribunal and the same is accordingly granted.

16. Concerning the injuries sustained by the petitioner, the Tribunal has proceeded on the premise that the Doctor was not examined, but, still, granted Rs.50,000/- towards injuries without properly appreciating the nature of injuries and the treatment he has undergone in Apollo Hospital. The Tribunal refers to Ex.A-55, discharge summary issued by the Apollo Hospital wherein the injuries, on physical examination, are described thus:

“Sutured CLW over Rt.leg 1x1cm over

anterior aspect. Sutured CLW over posterior aspect of Rt.leg in its lower 1/3. Swelling over Right knee & 1/3 Rt. thigh Tenderness +, Deformity +, Crepitus +, Abn.mobility + Patellar tap +. Swelling + over Rt. mid foot with tenderness movements of dorsiflexion painful (*Sic.* painful). D. Pedis A pulsation – absent. Posterior tibial a pulsation – felt. Active toe movements +”

The treatment given in the said hospital shows the following:

“On 14.11.2001 under SA - ORIF of T-Y # Right femur lower end was using interfragmentary screw fixation & TBW of Rt.patella was done using lateral approach Debridement & suturing of CLW. Post operative period uneventful. Check x-ray satisfactory.

Md. Nayasuddin was admitted with comminuted T-Y # lower end of Right femur. Comminuted # Right patella, multiple CLW over right leg and avulsion # Right navicular bone. ORIF for # femur & patella was done using lateral approach on 14.11.01. Conservative Rx. For # Right navicular bone. Postoperative period uneventful.”

17. Thus, it is clear that the petitioner sustained three (3) fractures as described in Ex.A-55. Towards each injury, the petitioner is entitled to Rs.25,000/-. Thus, he is entitled to Rs.75,000/- towards injuries including pain and suffering and the same is accordingly granted. He is

also entitled to Rs.15,000/- towards extra-nourishment, keeping in view the nature of injuries sustained by him. Towards attendant charges, he is entitled to a sum of Rs.3,000/- and towards transport charges, Rs.2,000/-.

18. Thus, the petitioner is entitled to a total sum of Rs.1,43,930/- (Rupees one lakh forty three thousand nine hundred and thirty only) as against Rs.1,00,000/- awarded by the Tribunal, and the same is accordingly granted, with interest at 7.5% per annum as against 9% p.a. granted by the Tribunal, on the entire compensation, from the date of petition till realisation, in view of the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**^[1].

19. Accordingly, the Civil Miscellaneous Appeal is allowed in part modifying the impugned award passed by the Tribunal by enhancing the compensation and reducing the rate of interest, as indicated above. There shall be no order as to costs.

20. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal stand disposed of.

A. SHANKAR NARAYANA, J

July 23, 2015.

PV

[\[1\]](#) 2013ACJ1403 = 2013(4)ALT35