

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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M.A.C.M.A. No.416 of 2005

JUDGMENT:

The instant appeal is preferred by the petitioner in O.P.No.1685 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-V Additional District Judge (Fast Track Court), Nizamabad (for short, 'the Tribunal') dissatisfied with the grant of Rs.5,000/- as compensation by order dated 13.10.2004 as against the claim for Rs.1,00,000/- laid under Section 166(1)(a) of the Motor Vehicles Act, 1988 (for short, 'the Act').

2. The appellant herein is the petitioner, while the respondent Nos.1 and 2, who are the owner and insurer of the lorry bearing registration No.HR 38 8713 respectively, were respondents in the original petition.

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 while the petitioner along with others were travelling in a lorry bearing registration No.ABT 9599 from Pochampad to Velgatur and when it reached Busapur Sub-station on National Highway No.7, another lorry bearing registration No.HR 38 8713 came in opposite direction and there was a collision between the two lorries, due to which he received injuries. According to him, he spent Rs.40,000/- towards medical and incidental charges and he claimed Rs.1,00,000/-, though he estimated Rs.9,11,500/- as just compensation by giving details in the petition, which was mentioned in the order under challenge at page-3.

5. The 1st respondent remained *ex parte* and the 2nd respondent-Insurance Company opposed the claim contending that the claim is

bad for non-joinder of the owner and insurer of the lorry, in which the petitioner was travelling.

6. Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry before the Tribunal, the petitioner examined himself as P.W.1 besides marking Exs.A.1 to A.4. On behalf of the 2nd respondent-Insurance Company, none were examined, but the copy of the insurance policy was marked as Ex.B.1 on consent.

7. The Tribunal, on issue No.1, on appraisal of evidence, both, oral and documentary, let in by the parties, held it in favour of the petitioner; on issue Nos.2 and 3, having found that an amount of Rs.5,000/- would be just and reasonable, accordingly granted the same towards compensation with interest at 9% per annum.

8. It is the said order which is under challenge in the instant appeal contending in the grounds of appeal that the Tribunal did not properly appreciate the evidence on record let in by the appellant and referring to certain decisions in paragraphs 4 and 5 sought to grant the balance amount.

9. Heard Sri Sarala Mahender Reddy, learned counsel for the appellant. The appeal against respondent No.1 was dismissed for default on 02.01.2012. However, dismissal of the appeal for default against him 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."

Though, respondent No.2 was served with notice, none appears on its behalf.

10. The simple question involved in this appeal is whether the petitioner is entitled to the enhancement of compensation?

11. Ex.A.3 is the wound certificate issued by the Civil Assistant Surgeon on the request made by the Station House Officer, Balkonda Police Station. The description of injuries is as hereunder:

- 1) A contusion on the left side upper arm 1 x 1 cm;
- 2) An abrasion on the upper lip 1/2 x 1/2 cm;
- 3) Bleeding from nose.

The Civil Assistant Surgeon opined that they were simple in nature. As seen from the contents extracted above from Ex.A.3, though, X-ray has not shown any fracture, but the petitioner has undergone treatment from 12.10.2001 to 03.11.2001. Keeping in view, the same and the inconvenience undergone by the petitioner on account of the injuries he sustained in the said accident, it would be reasonable to award a sum of Rs.12,000/- (Rupees twelve thousand only). Therefore, the petitioner is entitled to Rs.12,000/- (Rupees twelve thousand only) as against the award of Rs.5,000/- granted by the Tribunal. Interest at 9%

per annum is maintained on the amount granted by the Tribunal, but on the enhanced amount, the petitioner is entitled to the interest at 7.5% per annum as per the decision of the Hon'ble Apex Court in

Rajesh and others v. Rajbir Singh and others^[2].

12. In the result, the appeal is allowed in part and the award and decree dated 13.10.2004 passed by the Tribunal in O.P.No.1685 of 2001 is modified, enhancing the compensation to Rs.12,000/- (Rupees twelve thousand only) from Rs.5,000/- (Rupees five thousand only), with interest at the rate of 9% per annum on the amount of Rs.5,000/- granted by the Tribunal and at 7.5% per annum on the enhanced amount of Rs.7,000/- from the date of petition till realization. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

02nd February, 2015.

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^[1] 2001(1) ALT 495 (D.B.)

^[2] 2013 ACJ 1403