

**HONOURABLE SRI JUSTICE A. SHANKAR
NARAYANA**

M.A. C.M.A. No.1756 OF 2006

JUDGMENT:

Dissatisfied with the award of Rs.4,00,000/- towards compensation as against the claim for Rs.10,00,000/-, laid under Section 166 of the Motor Vehicles Act, 1988, seeking enhancement of the same, claimant preferred this Civil Miscellaneous Appeal against the order and decree, dated 04-10-2005, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - District and Sessions Judge, Vishakapatnam, in M.O.P. No.1452 of 2004.

2. The appellant herein is the claimant (petitioner) in the O.P. before the Tribunal, while respondent Nos.1 and 2, who are owner and insure, respectively, of the lorry bearing No.AP-07-TT-1197, are respondent Nos.1 and 2, respectively.

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

4. The facts, in brief, are that on 08-09-2004, when the claimant was proceeding towards Thatichatlapalem on

his scooter bearing No.AP-31-H-4466 on National Highway road, near Akkayyapalem traffic signal junction, and after waiting for green signal, started the scooter and proceeding slowly and cautiously, at about 11-00 a.m., driver of the lorry bearing No.AP-07-TT-1197, since driven it in a rash and negligent manner, hit the claimant's scooter from behind and dragged him along with his scooter to some distance and caused injuries all over his body. Immediately he was shifted to King George Hospital, where first-aid was rendered to him, and thereafter, for expert treatment, he was shifted to Seven Hills Hospital, Vishakapatnam and there, he was treated from 08-09-2004 to 04-11-2004 as in-patient. He claims that he was taking treatment even on the date of filing the claim petition. He claimed that he spent Rs.3,50,000/- towards medical expenses, and, therefore, sought Rs.10,00,000/- towards compensation.

5. The 1st respondent, owner of the lorry, though, entered his appearance through his Advocate, did not choose to file counter and his right to file counter was forfeited by the Tribunal.

6. The 2nd respondent, insurer of the lorry, opposed the claim by raising various pleas; of course, no violation of conditions of policy is forthcoming.

7. The Tribunal framed three (3) issues as to the

responsibility for the accident. During enquiry, the claimant examined himself as PW.1 and also examined the doctors, who treated and conducted plastic surgery to him, as PWs.2 and 3 respectively, and one P. Basavayya, Manager of a cinema theatre, as PW.4, and marked Exs.A-1 to A-11, apart from Exs.X-1 and X-2. On behalf of the 2nd respondent, insurer, no oral or documentary evidence was adduced.

8. On appraisal of evidence on record, the Tribunal held issue No.1 in favour of the claimant finding that the driver of the lorry was responsible for the accident. On issue No.2, the Tribunal, based on the evidence of PW.2, mostly on the contents of Ex.A-4, wound certificate, granted a sum of Rs.3,10,000/- towards medical expenses, Rs.40,000/- towards future medical expenses and for getting plastic surgery, and Rs.50,000/- towards 30% disability by accepting and acting upon Ex.A-6, the disability certificate issued by PW.2, and, thus, awarded a total sum of Rs.4,00,000/- towards compensation with interest at 7.5% per annum.

9. Aggrieved of the above order on the ground that meagre compensation was awarded, the instant appeal has been preferred by the claimant contending in the grounds of appeal that the Tribunal did not consider the

treatment taken by him as in-patient from 08-09-2004 to 04-12-2004, that the Tribunal did not grant any amount towards transportation, attendant charges and future loss of earnings and that granting only Rs.50,000/- towards 30% disability is on lower side, and, therefore, sought to grant the balance amount.

10. Heard Sri B. Devanand, learned counsel for the claimant (appellant), and Sri K. Lakshmi Prasad, learned counsel for the

2nd respondent - insurer.

11. Despite service of notice on respondent No.1, owner of the lorry that involved in the accident, none appeared on his behalf.

12. The finding recorded by the Tribunal that the claimant has sustained 30% disability, since based on the evidence of PW.2, is well reasoned, it does not require interference. Therefore, the amount of Rs.3,10,000/- granted by the Tribunal towards medical expenses, though, the medical expenditure was to the tune of Rs.3,50,000/- as reflected from the bills, is maintained.

Keeping in view, the nature of injuries and the treatment he has undergone, even the amount of Rs.40,000/- granted by the Tribunal for removal of nails, as it requires surgical intervention and for getting plastic surgery to his left thigh region, is also not disturbed. Even the amount of Rs.50,000/- granted by the Tribunal towards 30%

disability is maintained though, without resorting to multiplier method, when the Tribunal has taken 30% disability and recorded a definite finding thereon, certainly, the claimant is entitled to Rs.1,00,000/- towards disability, which he has to suffer through his life, and, thus, the amount of Rs.50,000/- awarded by the Tribunal is enhanced to Rs.1,00,000/-.

13. It is clear from the order that the Tribunal somehow sidelined grant of amounts towards pain and suffering, extra-nourishment, attendant charges and transportation charges. Therefore, keeping in view, the circumstances that the claimant was treated as in-patient from 08-09-2004 to 04-12-2004 in Seven Hills Hospital for more than two months, a sum of Rs.8,000/- is granted towards attendant charges, and Rs.2,000/- is awarded towards transport charges. Since the claimant sustained 30% disability, four fractures and a cut injury to the ulnar nerve, though question (?) mark is put against it, a sum of Rs.25,000/- is awarded towards pain and suffering and Rs.15,000/- towards extra-nourishment.

14. Thus, the claimant is entitled to a total compensation of Rs.5,00,000/- (Rupees five lakhs only) as against Rs.4,00,000/- awarded by the Tribunal, and the same is accordingly awarded,

with interest, on the entire compensation, at 7.5% per annum from the date of petition till the date of realisation.

15. Accordingly, the Civil Miscellaneous Appeal is allowed in part modifying the impugned award passed by the Tribunal, by enhancing the compensation as stated supra. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

February 10, 2015.

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