

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

-
M.A.C.M.A. No.384 of 2006

JUDGMENT:

Dissatisfied with the amount of Rs.20,000/- granted as compensation by order dated 14.10.2005 in O.P.No.1221 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Nalgonda (for short, 'the Tribunal') as against the claim of Rs.75,000/- laid under Sections 166 and 140 of the Motor Vehicles Act, 1988 (for short, 'the Act'), the instant appeal is preferred by the petitioner.

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.AP 16TT 782 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 on 17.07.2002 at about 7-30 a.m., the petitioner was proceeding to Nereducherla on his bicycle and when he reached the main road in the outskirts of Ramagiri village at about 8-00 a.m., a lorry bearing registration No.AP 16TT 782 coming in the opposite direction driven at high speed and in a rash and negligent manner, dashed the petitioner's bicycle, due to which, he fell down and received fracture to left thigh and serious head injury and other injuries to his person, and he was shifted to Government Area Hospital, Miryalaguda. The petitioner claimed that he has taken treatment with Dr.Sugnaneshwar, Orthopaedist at Miryalaguda and underwent surgical intervention by way of insertion of rods in the left thigh bone and he became disabled permanently and unable to attend

his normal activities, and, therefore, sought a sum of Rs.75,000/- against the respondents 1 and 2, who are the owner and insurer of the accident vehicle.

5. The 1st respondent, owner of the lorry, remained *ex parte*. The 2nd respondent opposed the claim raising various pleas.

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 examining Dr.P.Sugnaneshwar as P.W.2 and marked Exs.A.1 to A.6 in order to substantiate his claim made before the Tribunal. On behalf of the contesting 2nd respondent-Insurance Company, no witnesses were examined and no documents were marked.

7. The Tribunal has taken up issues 1 and 2 by common discussion and held issue No.1 in favour of the petitioner. On issue No.2, the Tribunal discarded 25% disability projected under Ex.A.5 disability certificate, disbelieved the evidence of P.W.2 observing that Ex.A.5 was not issued by the Medical Board and at the time of issuance of Ex.A.5, P.W.2 was not the member of the Medical Board, excluded Ex.A.5 from the purview of appreciation of evidence in assessing the compensation, and granted Rs.20,000/- towards injury, pain and suffering, treatment and disability, ordering the respondents 1 and 2 to pay the said amount with interest at 7.5% per annum.

8. It is the aforementioned order which is challenged by preferring the instant appeal contending in the grounds of appeal that the Tribunal did not appreciate the evidence of P.W.2 and ought to have considered the disability at 25% as stated by P.W.2 and the Tribunal also did not properly appreciate the age and income of the petitioner, and, therefore, sought to grant balance amount.

9. Heard Sri P.Kiran, learned counsel for the appellant, and Sri R.Venkat Rao, learned counsel for the 2nd respondent-Insurance Company. None appears for the 1st respondent-owner of the accident vehicle.

10. Perused the order under challenge and the evidence on record, both, oral and documentary. Ex.A.3 is the wound certificate issued by the Civil Assistant Surgeon, Area Hospital, Miryalaguda, showing that the petitioner sustained a contusion with deformity of left thigh and a clinical shaft of femur and a laceration over left cheek of 3 x 3 cms and the doctor opined that the first injury was grievous and the second injury was simple. Ex.A.5 is the disability certificate said to have issued by P.W.2 in his personal capacity. The Tribunal was right in rejecting Ex.A.5 as P.W.2 was not competent enough to issue Ex.A.5. However, the evidence of P.W.2 would show that the petitioner, initially, was admitted in District Headquarters Hospital, Nalgonda, where he worked earlier as Civil Surgeon, and according to him, he treated the petitioner in his Nursing Home for the fracture of shaft of left femur and the petitioner has undergone operation in Keerthi Orthopaedic Hospital, Miryalaguda. In his cross-examination, he admits that P.W.1 was treated by some other doctor at Miryalaguda Government Hospital and Ex.A.4 bunch of prescriptions do not disclose that P.W.1 was treated by him and that he has attended the operation of P.W.1 at Keerthi Orthopaedic Hospital, Miryalaguda. He also admits that he has got record with regard to the operation done by him with P.W.1. These answers are sufficient enough to believe the statement of fact made by P.W.2 that he has conducted operation in Keerthi Orthopaedic Hospital. However, when kept in view, the nature of injuries sustained by P.W.1 that being fracture of shaft of femur of the left thigh, certainly, it must have caused inconvenience to him.

Therefore, keeping in view, the temporary loss of earnings and nature of injury, the amount of Rs.20,000/- granted by the Tribunal is treated towards the injury. Despite the same, the petitioner is entitled to Rs.5,000/- towards pain and suffering, Rs.5,000/- towards extra nourishment and another Rs.5,000/- towards attendant charges. Thus, the petitioner is totally entitled to Rs.35,000/- (Rupees thirty five thousand only) as compensation. So far as the interest is concerned, interest at 7.5% per annum is maintained on the amount granted by the Tribunal, and so also on the enhanced amount, as per the decision of the Hon'ble Apex Court in ***Rajesh and others v. Rajbir Singh and others***^[1].

11. In the result, the appeal is allowed in part and the judgment and decree dated 14.10.2005, passed by the Tribunal in O.P.No.1221 of 2002 is modified, enhancing the compensation to Rs.35,000/- (Rupees thirty five thousand only) from Rs.20,000/- (Rupees twenty thousand only), with interest at the rate of 7.5% per annum throughout the award, from the date of petition till realization. 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

09th February, 2015

siva

[\[1\]](#) 2013 ACJ 1403