

HON'BLE SRI JUSTICE A. SHANKAR

NARAYANA

M.A.C.M.A. No.479 OF 2005

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JUDGMENT:

Dissatisfied with the award of Rs.27,000/- (Rupees twenty seven thousand only) granted by the learned Chairman, Motor Accidents Claims Tribunal – cum – II Additional Chief Judge, City Civil Court, Hyderabad (for short 'the Tribunal'), by the order, dated 29-09-2004, in O.P. No.1299 of 2000, as against the claim of Rs.1,50,000/- (Rupees one lakh and fifty thousand only) laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') the instant appeal is preferred by the petitioner.

2. The appellant herein is petitioner in the O.P. before the Tribunal and the respondent Nos.1 and 2 – Andhra Pradesh State Road Transport Corporation are also respondent Nos.1 and 2, respectively.

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

4. The facts, in brief, are that on 11-10-1998 at about 4.15 P.M., while the petitioner was proceeding on his Kinetic Honda bearing registration No.AHS 2781 towards Vanasthalipuram and while he was taking turn at Vanasthalipuram Cross Roads, an RTC bus bearing registration No.AEZ 5909 coming from Vanasthalipuram since driven by its driver in a rash and negligent manner, dashed the petitioner's vehicle, due to which, he fell down and sustained injuries. He was shifted to Kamineni Hospital, L.B.

Nagar, where he was treated as in-patient and has undergone surgical intervention. Therefore, he sought a sum of Rs.1,50,000/- as compensation, contending that the Station House Officer, Vanasthalipuram Police Station also registered a case in Crime No.301 of 1998 against the bus driver.

5. The respondents resisted the claim by filing counter, attributing rash and negligent driving to the petitioner himself and, therefore, sought to dismiss the claim.

6. Based on the above pleadings, the Tribunal framed three issues. During inquiry before the Tribunal, on behalf of the petitioner, besides examining himself as PW.1, also examined one C. Venkateswarlu, a colleague employee as PW.2, of course, both of them retired by the date of laying the claim petition and Dr.C. Kamaraj as PW.3 and marked Exs.A-1 to A-6 and also summoned and marked Ex.X-1 – case sheet. On behalf of the respondents, driver of the bus – G. Upender Reddy, was examined as RW.1, but no documents were filed.

7. The Tribunal, on overall assessment of evidence let in by the petitioner and the evidence of RW.1, not believing the evidence of RW.1 as regards the negligence attributed to the petitioner, believed the version of the petitioner supported by Ex.A-1, which is certified copy of first information report and Ex.A-2 – charge sheet registered and laid against Rw.1, found issue No.1 in favour of the petitioner.

8. The Tribunal, on issue No.2, having found one open wound over the left leg and a small punctured wound on the right cheek and basing on contents of Ex.A-4, granted Rs.2,000/- each

for two injuries, despite recording what is contained in Ex.A-4 to the effect that the petitioner was complaining pain in lower hip and swelling deformity, besides awarding Rs.3,000/- towards pain and suffering, extra nourishment and transport and basing on Ex.A-6 entries, granted a sum of Rs.20,000/- towards medical expenses and, thus, a total sum of Rs.27,000/- was granted as compensation discarding permanent disability of 40% set up by the petitioner.

9. Heard Sri V. Atchutaram, learned counsel for the appellant – petitioner and Sri N. Vasudeva Reddy, learned Standing Counsel for respondents – Corporation.

10. Perused the order and the oral and documentary evidence let in by both sides.

11. Now, the short question that arises for consideration is, whether the petitioner is entitled to enhancement?

12. It would be suffice to refer to the relevant documents on which, petitioner has been basing for award of enhanced compensation. Nothing-else is required except to look into the evidence of PW.3 and Ex.X-1.

13. Evidence of PW.3 – Dr.C. Kamaraj, an Orthopaedic Surgeon from Kamineni Hospital, L.B. Nagar, Hyderabad shows that the petitioner was admitted in their hospital on 11-10-1998 and he found the injuries i.e., i) fracture dislocation of right femur; and ii) compound fracture dislocation of left ankle, and the petitioner was operated on the same day and the operation performed was open reduction and internal fixation of right hip and left ankle. The

second surgical intervention was done on 25-10-1998, being skin grafting. The petitioner was discharged on 04-11-1998.

Ex.X-1 – case sheet, was spoken to by him. Though, he mentions that disability would be at 40% partial permanent, but he had not issued any disability certificate. Therefore, though, he was cross-examined elaborately, there is nothing brought out in his cross-examination to view contra to what was spoken to by him in regard to the nature of injuries sustained by the petitioner. In fact, in the cross-examination, this witness stated that the petitioner was having flection of 0 to 80 degrees as against the normal flection of 0-130 degrees. Of course, he answered that he has not noted any notes on the said fact. Therefore, the Tribunal was right in recording the finding that the percentage of disability spoken to by PW.1 was not substantiated as the evidence of PW.3 is of no assistance to arrive at, that the petitioner sustained 40% disability partial permanent in nature. Therefore, that finding cannot be disturbed.

14. However, it is glaring that the Tribunal, somehow, overlooked the fact that the petitioner was complaining of pain in lower hip and swelling deformity. It appears that the Tribunal did not at all note all the contents of Ex.X-1 summoned and marked through PW.3 on behalf of the petitioner. The case sheet would clearly disclose the nature of the fractures sustained by the petitioner and the surgical interventions undergone by him as spoken to by PW.3, even mentioning the details elaborately. When kept in view, the contents of Ex.X-1, the petitioner sustained two fractures, as spoken to by PW.3 as referred to in the above. Therefore, for both the injuries, the petitioner is entitled to a sum of Rs.40,000/-. The amount of Rs.3,000/- granted by the Tribunal towards pain and

suffering is maintained, since for the injuries an amount of Rs.40,000/- is granted. Towards extra nourishment, a sum of Rs.5,000/- is granted. Towards transportation and attendant charges, a sum of Rs.5,000/- is granted. The medical expenses granted by the Tribunal at Rs.20,000/- is also maintained in the absence of any legally acceptable evidence to enhance the same. Thus, in all the petitioner is entitled to a sum of Rs.73,000/- (Rupees seventy three thousand) as compensation as against the amount of Rs.27,000/- granted by the Tribunal. The rate of interest at 9% granted by the Tribunal is reduced to 7.5% per annum as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**^[1].

15. In the result, the appeal is allowed in part, and the order and decree, dated 29-09-2004, in O.P. No.1299 of 2000, passed by the Tribunal are modified, enhancing the compensation to Rs.73,000/- (Rupees seventy three thousand) from Rs.27,000/- with interest thereon at the rate of 7.5% from the date of petition till realization. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

February 26, 2015.
Mgr

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