

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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M.A.C.M.A. No.804 of 2005

JUDGMENT:

Dissatisfied with the amount of Rs.25,000/- as compensation by the order dated 10.01.2005, in O.P.No.788 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Court at Vizianagaram (for short, 'the Tribunal'), for the injuries sustained by the petitioner, who was minor on the date of filing of the suit, represented by his guardian, natural father, as against the claim of Rs.1,20,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), the instant appeal is preferred.

2. The appellant herein is the petitioner in the original petition before the Tribunal, while respondent Nos.1 and 2, who are the driver-cum-owner and insurer of the auto bearing No.AP-35-T-5505 respectively, were respondent Nos.1 and 2 respectively.

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 23.11.2002, while the petitioner along with others were proceeding on the road at Gopalarayudupeta Village at about 08.00 AM, an auto bearing No.AP-35-T-5505, being driven by its driver in a rash and negligent manner and at high speed and dashed against the petitioner, due to which, he received injuries. He was immediately shifted to Government Hospital, Bobbili and from there he was referred to KGH, Visakhapatnam, where he has undergone treatment as inpatient.

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

6. Basing on the above pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry, the petitioner himself was examined as P.W.1 besides examining Dr. Rajesh Kennedy as PW.2 and marked Exs.A.1 to A.5. On behalf of the 2nd respondent-Insurance Company, no witnesses were examined, but a copy of insurance policy was marked as Ex.B.1.

7. On appraisal of evidence let in by the petitioner, the Tribunal held issue No.1 in favour of the petitioner. On issue No.2, basing on the finding from the evidence of PW.2-Doctor who has spoken about 20% partial permanent disability and issued Ex.A.5-disability certificate and also from the fact that the evidence of Doctor would show that the petitioner sustained fracture of petrous bone on left side and cerebro spinal fluid leaking from the left ear, granted a sum of Rs.25,000/- mentioning that as per Section 140 of the Act under no fault liability, where there is grievous injury a sum of Rs.25,000/- will be the minimum compensation and, thus, awarded Rs.25,000/- as compensation with interest @ 9% per annum.

8. Aggrieved by the same, the instant appeal is preferred contending in the grounds of appeal that the Tribunal ought to have taken 20% disability and ought to have granted the amount as sought for and granting Rs.25,000/- despite the evidence of PW.2-Doctor who has spoken about the injuries and inconvenience and sufferance, to which the petitioner was put to, is unjust and unreasonable and, hence, sought to grant balance amount.

9. Heard Sri Jayanti S.C. Sekhar, learned counsel for the appellant, Sri G. Purushotham Rao, learned counsel for the

2nd respondent. Despite service of notice, none appears for the

1st respondent.

10. Perused the order and both, oral and documentary evidence let in by the petitioner. The injuries described in Ex.A.2-wound certificate would show that the petitioner sustained four injuries, amongst which the 1st injury was grievous in nature. Even the case sheet was summoned from KG Hospital, Visakhapatnam i.e., Ex.X1 which shows that the petitioner was treated as inpatient from 23.11.2002 to 10.12.2002 and the Civil Assistant Surgeon, Neuro who is PW.2 herein spoken about the injuries sustained by the petitioner and assessment of partial permanent disability. Be that as it may, the very evidence of PW.2 showing that the petitioner sustained fracture of petrous bone on left side and cerebro spinal fluid leaking from the left ear, the amount is on lower side and in fact the Tribunal has not awarded the amounts under various heads, which ought to have done despite discarding Ex.A.5-disability certificate showing 20% partial permanent disability. Therefore, keeping in view, the sufferance undergone by the petitioner and the injuries he has sustained, a sum of Rs.5,000/- is granted towards extra nourishment, Rs.5,000/- towards

attendant and transport charges. This apart an amount of Rs.25,000/- granted to the injuries, certainly requires enhancement, keeping in view the sufferance undergone by the petitioner, who was a small boy of 6 years old and he was put to inconvenience of leaking of fluid in left ear, a sum of Rs.40,000/- is awarded as against Rs.25,000/-. Thus, the petitioner is entitled to a sum of Rs.50,000/- as compensation, with 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***.

11. In the result, the appeal is allowed in part and the award and decree dated 10.01.2005 passed by the Tribunal in O.P.No.788 of 2003 is modified, enhancing the compensation to Rs.50,000/- from Rs.25,000/-, with interest at 7.5% per annum from the date of petition till realization, as against 9% per annum granted by the Tribunal, on the entire compensation, as per the decision of the Hon'ble Apex Court in **Rajesh's case** (Supra 1). 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

Date: 12.02.2015

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