

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

MACMA No. 761 of 2005

Judgment:

Having not satisfied with the award of Rs.5,000/- as compensation, by the order, dated 07.01.2005, in OP No. 1019 of 1998 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, Nizamabad, as against the claim of Rs.1,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), the instant appeal is preferred by the petitioner seeking enhancement.

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the Original Petition before the Tribunal.

3. The facts, in brief, are that on 20.11.1997 at about 4.00 AM, the petitioner along with his friend was proceeding towards Armoor from Govindpet on a motor bike bearing registration No.AP-25/A-2096 and when they reached near Mamidipally village shivar on National Highway No.7, an Ashok Leyland Tipper bearing registration No.AP-13/U-181 driven by its driver at high speed in a rash and negligent manner came and dashed the motor bike, due to which both of them fell down and received multiple injuries on their person respectively. The petitioner claims that he was immediately shifted to Government Hospital, Armoor, and he was treated as inpatient and, as there was no proper treatment, he had undergone treatment under a private doctor and incurred an amount of Rs.30,000/- towards the same. He claims that he was working as a Supervisor in a Tractor showroom and was earning more than Rs.3,000/- per month, but due to injuries sustained by him, he became permanently disabled and, therefore, sought a

compensation of Rs.1,00,000/-.

4. The first respondent – owner of the Tipper lorry remained *ex parte*. The second respondent – Insurance Company opposed the claim.

5. The Tribunal, based on the said pleadings, framed the following issues.

- “1. Whether the accident was due to rash and negligent driving of the vehicle bearing No.AP-13/U-181 by its driver?
2. Whether the petitioner is entitled for compensation? If so, to what just amount and from which of the respondents?
3. To what relief?”

6. During enquiry, the petitioner, besides examining himself as PW.1, also examined the Medical Officer by name Dr. L. Ramulu as PW.2 and marked Exs.A1 to A7. No witnesses were examined on behalf of the second respondent – Insurance Company, however, copy of insurance policy was marked as Ex.B1 on consent.

7. The Tribunal, on appraisal of evidence let in by the petitioner, held issue No.1 in favour of the petitioner and also found that the accident took place during coverage period under Ex.B1 policy. On issue Nos.2 and 3, the Tribunal, basing on the entries in Ex.A3 and discarding the evidence of PW.2 and Ex.A6 – disability certificate issued by PW.2, on appreciation of evidence, holding that the petitioner has sustained simple injuries, awarded a sum of Rs.5,000/- as compensation making the respondents 1 and 2 jointly and severally liable to pay the same with interest at 9% p.a. thereon.

8. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds of appeal that the Tribunal has not properly appreciated the evidence of PWs.1 and 2 and Exs.A3 toA6 and ought to have granted Rs.1,00,000/- instead of Rs.5,000/- by considering the evidence of PW.2 and Exs.A3 and A6 and, therefore, sought to grant the balance amount.

9. Heard Sri Y.S. Yellanand Gupta, learned counsel for the appellant. No representation for the second respondent – Insurance Company. The instant appeal was dismissed against the first respondent – owner of the vehicle for default, by the order dated 02.01.2012, however, since the first respondent has suffered a decree by remaining *ex parte* before the Tribunal, the dismissal order passed against him by this Court is of no consequence in view of the decision of the Division Bench of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma**^[1].

10. The short question that arises for consideration is whether the petitioner is entitled to enhancement of compensation.

11. The finding recorded by the Tribunal in rejecting the evidence of PW.2 and excluding Ex.A6 – the disability certificate issued by PW.2 is based on proper appreciation of evidence, as PW.2 in his cross-examination admitted that he has not asked the petitioner to get x-ray for examination before issuing Ex.A6 – disability certificate. Hence, that finding cannot be disturbed. What remains on record is Ex.A3 – wound certificate, which gives the description of injuries sustained by the petitioner. As seen from the contents of Ex.A3, the petitioner sustained four (4) simple injuries. The Tribunal has granted Rs.5,000/- , but the petitioner is entitled to Rs.3,000/- per injury and, thus, the

amount of Rs.5,000/- granted by the Tribunal is enhanced to Rs.12,000/- (3,000/- x 4 = Rs.12,000/-). So far as interest is concerned, the Tribunal has granted interest at 9% p.a., but on the enhanced amount the petitioner is entitled to interest at 7.5% p.a., from the date of petition till realization, as per the decision of the Hon'ble Apex Court in

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

12. Accordingly, the instant MACMA is partly allowed. There shall be no order as to costs.

13. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal shall stand closed.

A. SHANKAR NARAYANA, J

Date: 25.11.2015

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^[1] 2001(1) ALD 453 (DB)

^[2] 2013 ACJ 1403 = 2013(4) ALT 35