

**HON'BLE SRI JUSTICE A. SHANKAR
NARAYANA**

M.A.C.M.A. No.907 OF 2005

JUDGMENT:

Not satisfied with the award of Rs.48,000/-(Rupees forty eight thousand) as compensation granted by the learned Chairman, Motor Accidents Claims Tribunal – cum – VI Additional District Judge, Nalgonda at Miryalguda (for short 'the Tribunal') in O.P. No.1453 of 2001, by order, dated 12-01-2005, as against the claim of Rs.1,50,000/-(Rupees one lakh and fifty thousand only) laid under Section 166 read with 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 in the O.P. before the Tribunal, while respondent Nos.1 and 2, who are owner and insurer of lorry bearing registration No.AP 26U 3040, respectively, are respondent Nos.1 and 2, respectively.

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

4. The facts, in brief, are that on 30-04-2001, the petitioner went to L.B. Nagar on his personal work and was proceeding to Nereducherla in order to attend yet another work on motor cycle bearing registration No. AP 24 0B 3252 which was driven by his friend and when they reached outskirts of L.B. Nagar, a lorry bearing registration No.AP 26U 3040 came from behind and hit the

motor cycle, due to which, the petitioner fell down and sustained injuries. The Station House Officer, Garidepally Police Station also registered a case in crime No.28 of 2001 under Section 337 IPC initially. The petitioner claims that he was immediately shifted to Yashoda Hospital, Hyderabad and he has undergone treatment for a period of one year and after his discharge, he was still undergoing treatment by the date of making the claim petition. According to him, he spent Rs.50,000/- towards medical expenses, and is an agriculturist and doing vegetables business, also earning Rs.3,000/- per month and used to contribute his entire earnings for his family. Therefore, he sought to grant an amount of Rs.1,50,000/- as compensation against respondent Nos.1 and 2, who are the owner and insurer of the lorry respectively.

5. Respondent No.1 remained *ex parte* before the Tribunal.

6. Respondent No.2 – Insurance Company resisted the claim, requiring the petitioner to prove the material allegations mentioned in the petition.

i) It has also obtained permission under Section 170 of the Act in I.A. No.33 of 2004, dated 29-11-2004.

7. Based on the pleadings, the Tribunal framed three issues about the responsibility for the accident. During inquiry, on behalf of the petitioner, besides examining himself as PW.1, also examined Dr.P. Ranganadham as PW.2 from Yashoda Hospital and marked Exs.A-1 to A-7. On behalf of the contesting respondent, neither oral nor documentary evidence was let in.

8. The Tribunal on appraisal of evidence through PW.1

supported by Exs.A-1, A-2 and A-6, held issue No.1 in favour of the petitioner.

9. On issue No.2, the Tribunal, despite referring to the evidence of PW.2 under issue No.1, granted a sum of Rs.1,000/- towards transport to hospital; a sum of Rs.42,000/- covered by Ex.P-7 bunch of bills and a sum of Rs.5,000/- towards pain and suffering, and recorded the finding that there was no disfiguration of the face as claimed by the petitioner and no permanent disability was sustained and the evidence of PW.2 that the petitioner was susceptible for epilepsy, since, only was an apprehension, ruled it out and, thus, distinguishing the facts occurring in the decisions on which the learned counsel for the petitioner placed reliance, referred to in paragraph No.9 of the order with the facts occurring in the instant case, did not agree with the stand of the petitioner that there was partial permanent disability and, thus, granted a total sum of Rs.48,000/- with interest at 6% per annum.

10. It is the aforesaid order which is under challenge in the instant appeal by the petitioner contending in the grounds of appeal that the Tribunal was not right in discarding the evidence of PW.2 without discussing the evidentiary value of PW.2's evidence and even, interest granted by the Tribunal was only at 6% per annum, though, the petitioner was entitled at 12% and, therefore, sought to grant balance amount.

11. Heard Sri Malipeddi Srinivas Reddy, learned counsel for the appellant. No representation for the 2nd respondent – Insurance Company.

12. The instant appeal was dismissed for default against the 1st respondent, who is owner of the lorry, by orders dated 03-01-2012, since, the appellant herein failed to take notice to the owner. But, in view of the judgment of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma,**^[1] it has to be concluded that the said dismissal is of no consequence in fastening liability on insurer – the 2nd respondent since the 1st respondent – owner remained *exparte* before the Tribunal.

13. Perused the order and the evidence let in by the petitioner, both, oral and documentary, more particularly, the evidence of PW.2 and the documentary evidence through Exs.A-2 and A-7.

14. The Tribunal while discussing the case under issue No.1, referred to the evidence of PW.2, Medical Officer, which runs thus:

“PW-2 Dr.P. Ranganadhan deposed that he treated the petitioner was admitted in the Yashoda Hospital, on 30-04-2001 at the alleged history of hit by a truck at Miryalaguda at about 8.00 AM has a laceration on the forehead with bleeding from the nose, he was fully conscious, coherent and moving all four limbs C.T. Scan on the brain showed depressed fractures of frontal bone involving right frontal synos. He was operated on the same day alivation of compound depression of fracture involving right frontal synos and duroplanti was them. There was 2 C.M. deul tare with ematoma inside the brain. Through PW-2 the medical certificate and discharge certificates

are marked as Ex.A-2 and Ex.A-7. There is a possibility of epilepsy in future. He required permanent treatment. The respondent no.2 could not get any incriminating evidence in the cross-examination of PW-2 except an admission that he has not mentioned the age of injuries and that the bills are issued by the Billing Department but they are not concerned to him. PW-2 denied the suggestion of the Insurance Company that he has not conducted the operation and not treated the patient and not verified the case sheet. But the insurance company has not come up their evidence in support of the aforesaid suggestions put to the PW-2. Ex.A-2 the medical certificate is a self-explanatory and a detailed report regarding the case history of the patient and it is almost a case sheet. The Court is accepting the evidence of PW-2 that claim petitioner has undergone treatment in Yeshoda Hospital, Hyderabad and the petitioner has received serious injuries to head, back, chest both hands and legs.”

Though, there was absolutely no need or necessity to refer to the evidence of PW.2 under issue No.1, somehow, the Tribunal went on narrating the evidence of PW.2, and even recorded that the Tribunal was accepting the evidence of PW.2 and despite the same, except granting the medical expenses amount of Rs.42,000/- basing on Ex.P-7; granting Rs.1,000/- towards transport charges and Rs.5,00/- towards pain and suffering, has not gone into the nature of injuries sustained by the petitioner as spoken to by PW.2 and as evidenced by Ex.A-3. PW.2 was very specific that the C.T. scan of the brain shows depressed fractures of frontal bone involving right frontal sinus, for which a surgical intervention had taken place on the same day with elevation of

compound depressed fracture involving right frontal sinus. Even, PW.2's evidence shows that there was about 2 cm. diameter dural tear with intra cerebral haematoma inside the brain. Thus, it speaks the impact on the brain, in which case, opinion of PW.2 that the petitioner requires permanent treatment cannot be ruled out though, on different spells and so also the opinion of PW.2 that PW.1 is susceptible to epilepsy. Therefore, the Tribunal was not right in just opining that it was a mere apprehension and concerning disfiguration holding that there was no disfiguration. Therefore, when kept in view, the fractures to the frontal bone and the surgical intervention and the consequence of the fracture of frontal sinus accounting for disfiguration to some extent, certainly, the petitioner is entitled to a sum of Rs.50,000/- as against Rs.99,000/- claimed by him towards injury as such and extra nourishment. The other amounts granted by the Tribunal are maintained. Thus, the petitioner is totally entitled to Rs.98,000/- (Rupees ninety eight thousand) as against Rs.48,000/- granted by the Tribunal. Concerning the rate of interest, the Tribunal granted the same at 6% per annum on the amount awarded by it, but, the same is enhanced to 7.5% per annum as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**^[2].

15. In the result, the appeal is allowed in part, and the order, dated 12-01-2005, in O.P. No.1453 of 2001, passed by the Tribunal is modified, enhancing the compensation to Rs.98,000/- (Rupees ninety eight thousand) from Rs.48,000/- 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

March 09, 2015.
Mgr

[\[1\]](#) . 2001 (1) ALD 453 (DB)
[\[2\]](#) . 2013 ACJ 1403