

THE HON'BLE SMT. JUSTICE ANIS

M.A.C.M.A. No. 1390 OF 2005

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JUDGMENT:

This appeal is filed by the appellant/petitioner under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the award dated 04.02.2005 passed by the Motor Accidents Claims Tribunal-cum-II Additional Chief Judge, City Civil Court at Hyderabad, in O.P.No.1471 of 2001, awarding compensation of Rs.1,02,732/-.

2. The claimant filed the above O.P under Section 166 of the Act, claiming compensation of Rs.4 lakhs on account of the injuries sustained by him in a motor vehicle accident.

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

4. The brief averments made in the petition are as follows:

On 08.10.2000 at about 12.15 hours, the petitioner and his brother by name T.Srikar were proceeding on their scooter bearing No.ATX 3523 from Bellampally to Mancherial and when reached near Gadderagadi bus stop, one lorry bearing No.AHH 2152 coming from opposite direction with high speed in a rash and negligent manner, dashed their scooter. Due to impact, the petitioner and his brother fell down from the scooter and received grievous multiple injuries. The brother of the petitioner died on the spot and the petitioner received fracture injuries and other injuries all over the body. Immediately, the petitioner was shifted to Karimnagar Hospital for treatment and thereafter he was shifted to NIMS Hospital, Hyderabad for treatment. The dead body of the brother of the petitioner was shifted to Government Civil Hospital, Mancherial for post-mortem examination. The police, Ramakrishna Puram, Adilabad District registered the same as a case in Crime No.133 of 2000 for the offence punishable under Sections 304-A and 338 IPC.

The petitioner stated that due to the injuries sustained by him, he became completely disabled and thereby lost his earning capacity. Further, the

petitioner incurred huge amount for the treatment taken by him in various hospitals.

It is further stated that the first respondent being the owner and the second respondent being the insurer of the crime vehicle, are jointly and severally liable to pay compensation to the petitioner.

5. The first respondent remained *ex parte* before the Tribunal.

6. The brief averments made in the counter filed by the second respondent before the Tribunal are as follows:

The respondent put the petitioner to prove the manner of accident, age and income of the petitioner and the injuries sustained by him in the accident. The respondent denied that the petitioner sustained permanent disability and on the other hand contended that the petitioner sustained only simple injuries. The respondent put the petitioner to prove that the driver of the alleged lorry was having valid driving licence to drive the vehicle. The respondent finally stated that the compensation claimed by the petitioner is high and excessive, and prayed the Court to dismiss the petition.

7. Basing on the pleadings, the Tribunal framed three issues and to substantiate the claim, PWs 1 to 3 were examined and got marked Exs.A.1 to A.16 and Exs.X.1 and X.2. On behalf of the second respondent, no oral evidence was adduced, but Ex.B.1 was marked by consent.

8. Basing on the oral and documentary evidence, the Tribunal held that the accident was caused due to rash and negligent driving of the driver of lorry bearing No.AHH 2152 and awarded compensation of Rs.1,02,732/- along with 9% interest.

9. Not satisfied with the award passed by the Tribunal, the appellant/petitioner preferred the present appeal.

10. The learned counsel for the appellant/petitioner argued that the Tribunal has not considered the evidence of PW1 and PW3 and also not considered Ex.A.11 – bunch of medical bills. It is also argued that the Tribunal has not granted any compensation for the grievous injury sustained to the head of the petitioner. It is also argued that no compensation was awarded to the petitioner under the

head of disability and further the petitioner was about one year in the hospital bed and thereby lost his earnings. It is further argued that due to the accident, the leg of the petitioner was shortened, and finally prayed the Court to enhance the compensation.

11. On the other hand, the learned counsel for the insurance company argued that the petitioner has not filed any evidence to show that he was suffering with disability. It is further argued that the petitioner has not produced any disability certificate from the competent authority. It is also argued that some of the medical bills filed by the petitioner do not contain the name of the petitioner, as such the Tribunal after considering all these aspects, rightly awarded just and reasonable compensation and the said finding needs no interference, and prayed the Court to dismiss the petition.

12. Having regard to the submissions made by both the learned counsel, the points that arise for consideration are:

1. Whether the appellant/petitioner is entitled for enhancement of compensation?
- 2 . Whether the compensation awarded by the Tribunal is just and reasonable?

13. **Points:**

A perusal of the evidence shows that there is no dispute that the accident was occurred on 08.10.2000 due to rash and negligent driving of the driver of the lorry bearing No.AHH 2152, in which the petitioner sustained injuries, and the said finding of the Tribunal needs no interference.

14. A perusal of Ex.A.5 certified copy of injury certificate shows that the petitioner sustained eight simple injuries and two grievous injuries. The Tribunal rightly considered the injuries and awarded Rs.16,000/- for the eight simple injuries and Rs.30,000/- for the two grievous injuries.

15. According to the petitioner, he was in the NIMS hospital from 11.10.2000 to 15.11.2000 and thereafter also he was bedridden for a considerable period and was unable to do any work, and he suffered loss of earnings. PW3 - the doctor, who treated the petitioner, stated that the petitioner suffered one inch shortening of right leg. To prove the said fact, there is no documentary

evidence. Further, the petitioner has not produced any disability certificate to show that he was suffered 20% disability. Therefore, in the absence of any documentary evidence, the said fact cannot be considered.

16. The Tribunal awarded Rs.1,000/- towards transportation charges, Rs.15,000/- towards pain and suffering and extra-nourishment and Rs.1,000/- for medical attendant. At this juncture, the learned counsel for the appellant/petitioner argued that the Tribunal awarded less amount towards transportation and medical attendant charges, and prayed the Court to enhance the said compensation. Considering the nature of the injury suffered by the petitioner, an amount of Rs.3,000/- is awarded under the head of transportation instead of Rs.1,000/- and another sum of Rs.1,000/- is awarded towards medical attendant charges besides already granted amount of Rs.1,000/-.

17. The main grievance of the appellant/petitioner is that the Tribunal awarded only Rs.39,732/- towards medical expenses without considering Exs.A.11 and A.12 wholly. The Tribunal, after perusing the medical bills Exs.A.11 and A.12, held that the entire amount under Ex.A.12 cannot be awarded on the ground that some of the medical bills are not contained the name of the petitioner. Therefore, the contention of the appellant/ petitioner that the Tribunal has not considered the entire amount under the medical bills, cannot be accepted.

18. No doubt, the petitioner received two grievous injuries and eight simple injuries and for those injuries, he was initially took the treatment in a private hospital at Karimnagar and thereafter he was admitted in NIMS hospital and took treatment for about one month. Therefore, during the said period and thereafter, the petitioner must not have attended any work. Therefore, an amount of Rs.5,000/- is awarded towards loss of earnings.

19. Thus, the total compensation payable to the appellant/petitioner comes to Rs.1,10,732/- (Rs.16,000/- + 15,000/- + 3,000/- + 30,000/- + 39,732/- + 2,000/- + 5,000/-).

20. Accordingly, the compensation awarded by the Tribunal is enhanced from Rs.1,02,732/- to Rs.1,10,732/-. As far as the rate of interest is concerned, in view of the different rate of interests granted by the Hon'ble Supreme Court in the decisions reported in *Sanobanu Nazirbhai Mirza and others Vs. Ahmedabad*

Municipal Transport Service and Rebeka Minz and others Vs. Divisional Manager, United India Limited Insurance Company Limited and another, I am of the view that an interest at 7.5% per annum shall be awarded on the enhanced amount of Rs.8,000/- from the date of appeal till the date of realisation.

21. Accordingly, the appeal is partly allowed. No order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

(ANIS, J)

14.08.2015

Anr