

## **HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA**

### **M.A. C.M.A. Nos.2816 AND 2817 OF 2006**

#### **COMMON JUDGMENT:**

Since the orders under challenge arise out of the same accident, these appeals are being disposed of by this common judgment.

2. Aggrieved of the dismissal of O.P. Nos.1157 of 2004 and 1158 of 2004, respectively, by the orders, dated 26-10-2006, respectively, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - I Additional Metropolitan Sessions Judge - cum - XV Additional Chief Judge, Hyderabad, the instant appeals are preferred by the appellants.

3. The appellants in both the appeals are the petitioners in the respective O.Ps., while respondent Nos.1 and 2, who are owner and insurer, respectively, of the lorry bearing No.HR-38-E-8622 that involved in the accident, are respondent Nos.1 and 2, respectively.

4. For the sake of convenience, the parties are hereinafter referred to as arrayed in the O.Ps. before the Tribunal.

5. The facts, in brief, are that on 29-01-2004, while, both the petitioners, who are father and daughter, respectively, along with Smt. Anjuman Bhanu @ Anjuman Fathima, who is wife of the petitioner in the former appeal and mother of the petitioner in the latter appeal, were returning to their house at Noorkhan Bazar from

Afzalgunj, on a scooter bearing No.AP-11-D-6422 and at about 11-00 p.m., when they reached near Bade Miya Petrol Pump, lorry bearing No.HR-38-E-8622 driven in a rash and negligent manner at high speed, came from behind, and hit their scooter, due to which, both the petitioners sustained injuries, whereas Smt. Anjuman Bhanu succumbed to the injuries sustained by her in the accident. Therefore, the petitioners sought a sum of Rs.1,00,000/- each, under Section 163-A of the Motor Vehicles Act, 1988 (for short 'the Act') read with Rule 455 of the A.P. Motor Vehicles Rules, 1989, for the injuries sustained by them in the accident.

6 . Respondent No.1, owner of the lorry that involved in the accident, remained *ex parte* in both O.Ps. before the Tribunal.

7. However, respondent No.2, insurer of the lorry, opposed the claims made by the respective petitioners, and obtained permission under Section 170 of the Act to agitate the defences available to respondent No.1 since he remained *ex parte*, in both the O.Ps.

8 . The Tribunal framed three (3) identical issues in both the O.Ps. During enquiry, the petitioners examined themselves as PW.1 in the respective O.Ps., and marked Exs.A-1 to A-7 in O.P. No.1158 of 2004, whereas Exs.A-1 to A-5 were marked in O.P. No.1157 of 2004. On behalf of respondent No.2, Ex.B-1 - copy of the insurance policy of the lorry involved in the accident, and Ex.B-2 - legal notice were marked with consent, in both the O.Ps.

9 . The Tribunal, on issue No.1, in both O.Ps., based on the evidence of the respective petitioners, supported by the documentary evidence, held them in favour of the petitioners.

10. On issue No.2, since both the claims were laid under Section 163-A of the Act, finding that no disability certificate was filed, as per the admissions made by the respective petitioners in their cross-examination, holding that Exs.A-3 and A-4 in O.P. No.1158 of 2004 and Exs.A-3 and A-5 in O.P. No.1157 of 2004 were produced by influencing the hospital authorities for the purpose of claiming more compensation, discarded them. The Tribunal, also observing that since the F.I.R. and the charge sheet marked as Ex.A-1 and A-2, respectively, do not disclose that the petitioners sustained injuries, and as they show them as eye-witnesses to the accident but not as injured witnesses, disbelieved the case of the petitioners and, thereby, dismissed both the claims without costs.

11. It is the aforesaid orders, which are under challenge in the instant appeals by the petitioners, contending in the grounds of appeal that the Tribunal was not right in dismissing their claims, that it went wrong in observing that in the absence of permanent disability, the petitioners are not entitled to compensation, and, thus, the evidence let in by the petitioners was not appreciated in proper perspective despite both of them sustaining grievous injuries, and, therefore, sought to grant Rs.1,00,000/- to each of them as compensation.

12. Heard Sri T. Viswarupa Chary, learned counsel for the petitioners (appellants), and Sri Nisaruddin Ahmed Jeddi, learned counsel for the 2<sup>nd</sup> respondent - insurance company, in both the appeals.

13. Despite service of notice, none appears for respondent No.1, owner of the lorry.

14. During the course of arguments, as it was pointed out that the medical officer was not examined to prove the medical records,

which are Exs.A-3 and A-5 in O.P. No. 1157 of 2004 and Exs.A-3 and A-4 in O.P. No.1158 of 2004, a finding was recorded by the Tribunal that without there being any permanent disability forthcoming, the claim under Section 163-A of the Act is not maintainable and that the medical records were obtained by influencing the hospital authorities. Learned counsel has pointed out Note-IV in Schedule - II to Section 163-A of the Act, dealing with the general damages in case of injuries and disabilities, and basing on the disabilities, he submits that towards injuries, the amounts mentioned therein can be granted and since both the petitioners sustained two grievous injuries, the amount shown in the Schedule can be awarded.

15. Learned standing counsel for the insurance company has not objected and conceded to grant Rs.5,000/- to each petitioner towards compensation as per Note-IV in Schedule - II to Section 163-A of the Act, representing that at this distance of time, if the matters are remitted, it would be difficult to secure evidence further.

16. In view of the submissions made by both sides, a sum of Rs.10,000/- (Rupees tent thousand) is granted towards compensation in each appeal with interest at 7.5% per annum from the date of petition till realisation, as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**, setting aside the orders and decrees under challenge, irrespective of merits in the matters.

17. Accordingly, both the appeals are allowed in part, as indicated above. There shall be no order as to costs.

18. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal stand disposed of.

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**A. SHANKAR NARAYANA, J**

**April 9, 2015.**

**PV**