

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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M.A.C.M.A.Nos.500 and 501 of 2006

COMMON JUDGMENT:

These two appeals arise out of one and the same accident, preferred by the petitioners respectively. Dissatisfied with the award of compensation of Rs.87,000/- and Rs.86,000/- respectively, as against claims they have made for Rs.1,50,000/- and Rs.2,00,000/- respectively, under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') read with Rule 455 of Andhra Pradesh Motor Vehicles Rules, 1989, challenging the orders dated 03.11.2005 in M.V.O.P.Nos.1071 and 814 of 2004 on the file of Chairman, Motor Accidents Claims Tribunal-cum-V Additional District Judge, Warangal (for short, 'the Tribunal').

2. The appellants herein are the petitioners in the original petition before the Tribunal, while respondent Nos.1 and 2 herein, who are the owner and insurer of the auto bearing No.AP-36-V-1747 respectively, were respondents 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 29.01.2001, both the petitioners left Saipet to proceed to Mulug to attend a function and boarded an auto bearing No.AP-36-V-1747 and at about 05.00 AM, when it reached Diesel Colony cross roads, Kazipet, the driver of the auto drove it in a rash and negligent manner and having noticed a cyclist and to avoid accident, he applied sudden brakes, on account of which, it turned upside down resulting injuries to both the petitioners. They were immediately shifted to Ganesha Orthopedic Hospital, Hanamkonda and took treatment by spending huge amounts. According to them, they are hamalies and due to the fractures they sustained, they are unable to pursue their profession. Therefore, they sought compensation as mentioned above.

5. The 1st respondent-owner of the vehicle remained *ex parte*. The 2nd respondent-insurance company opposed the claim by reserving its right to raise defences

available under Section 170 of the Act.

6. Basing on the above pleadings, the Tribunal framed three identical issues about the responsibility for the accident. During enquiry, the petitioners examined themselves as PW.1 respectively, and the Doctor who treated them as PW.2 and marked Exs.A.1 to A.14. Besides the same, in M.V.O.P.No.1071 of 2004, Ex.X.1-case sheet was also marked. On behalf of the contesting respondent, none were examined and no documents were marked.

7. The Tribunal, on appraisal of evidence let in by the petitioners, held issue No.1 in favour of the petitioners. On issue No.2, basing on the three fractures sustained by the petitioner in the former appeal granted Rs.6,000/- towards loss of earnings, Rs.25,000/- towards medical expenses and extra nourishment, Rs.15,000/- towards pain and suffering, Rs.40,000/- towards continuing permanent disability and Rs.1,000/- towards transport to hospital, making a total sum of Rs.87,000/-. In the latter appeal, except the sum of Rs.1,000/- towards transport to hospital, the other amounts awarded were identical with the amounts awarded to the petitioner in the former appeal.

8. Not satisfied with the amounts awarded by the Tribunal, the petitioners respectively, preferred the instant appeals contending in the grounds of appeals that the Tribunal did not properly appreciate the 30% disability spoken to by PW.2 and granted a meager sum and, therefore, sought to grant balance amount.

9. Heard Sri A. Prabhakar Rao, learned counsel for the appellants and Sri Srinivasa Rao Vulta, learned counsel for the 2nd respondent-insurance company. The 1st respondent is shown as not necessary party in both the appeals.

10. The short question that arises for consideration, in these two appeals, is whether the appellants are entitled to enhancement of compensation.

11. Perused the order under challenge and oral and documentary evidence let in by the petitioners. As seen from the description of injuries shown in Ex.A.2 in the former appeal, the petitioner sustained four injuries, amongst which injury Nos.1 to 3 are fractures and 4th injury is simple in nature. It is no doubt true, PW.2 has spoken about 30% disability. But, the Tribunal has rightly discarded it as it was issued by him in his private capacity. However, the Tribunal agreed with the evidence of PW.2 to the extent of the petitioner suffering with continuing permanent disability and that

has been the reason for awarding Rs.40,000/- towards continuing permanent disability. So far as the amount of Rs.6,000/- granted by the Tribunal towards loss of temporary earnings is concerned, since the petitioner sustained three fractures, for a considerable time he would not have been able to continue his profession. As seen from the nature of injuries and description of first three injuries, an amount of Rs.9,000/- claimed by the petitioner is granted as against Rs.6,000/-. So far as medical expenses are concerned, though, the Tribunal accepted Exs.A.13 and A.14, still, it has restricted to Rs.25,000/- as the petitioner claimed Rs.25,000/- only, despite the fact that Exs.A.13 and A.14 reflect Rs.33,900/-. Therefore, the entire amount of Rs.33,900/- is granted as against Rs.25,000/-. Concerning pain and suffering and transport charges, the amounts awarded by the Tribunal appears to be just and reasonable warranting no interference. Concerning the amount of Rs.40,000/- towards continuing permanent disability, in view of the nature of injuries which are shown as 1 to 4 in Ex.A.2, certainly, the petitioner is entitled to enhancement and therefore, as against Rs.40,000/-, it is enhanced to Rs.60,000/- since the Tribunal did not arrive at a definite percentage of disability by recording a finding. Thus, the petitioner is totally entitled to a sum of Rs.1,18,900/- as against Rs.87,000/- granted by the Tribunal.

12. So far as latter appeal is concerned, the petitioner sustained three fractures which are described as 1 to 3 in Ex.A.2, and also keeping in view, the evidence of PW.2, the petitioner is entitled to Rs.9,000/- as against Rs.6,000/- granted by the Tribunal towards loss of earnings, Rs.36,300/- as against Rs.25,000/- awarded by the Tribunal towards medical and extra nourishment. The amount of Rs.15,000/- granted towards pain and suffering needs no enhancement. Concerning continuing permanent disability, for the reasons mentioned in the above, while dealing the said component in the former appeal, the petitioner herein is also entitled to Rs.60,000/-. The petitioner, somehow, deprived of transport charges, in the instant appeal, though, an amount of Rs.1,000/- was granted in the former appeal. Therefore, a sum of Rs.1,000/- is granted towards transport charges. Thus, the petitioner is totally entitled to a sum of Rs.1,21,300/- as against Rs.86,000/- awarded by the Tribunal.

13. So far as the interest is concerned, the Tribunal granted 7.5% per annum and the same is maintained for the enhanced amounts also as per the decision of the Hon'ble Apex Court in ***Rajesh and others v. Rajbir Singh and others*** in both the appeals.

14. In the result, the appeals are allowed in part. There shall be no order as to costs.

15. As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

Date: 19.02.2015.

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