

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A. C.M.A. No.543 OF 2006

JUDGMENT:

Dissatisfied with the award of Rs.41,500/- towards compensation as against the claim of Rs.1,00,000/-, laid under Section 166 of the Motor Vehicles Act, 1988, seeking enhancement of the same, petitioner preferred this Civil Miscellaneous Appeal against the order and decree, dated 12-01-2006, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - IV Additional District Judge, Warangal, in O.P. No.660 of 2003.

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, respectively, of the auto-rickshaw bearing No.AP-36-V-5450, are respondent Nos.1 and 2 respectively, and respondent No.3, who is the wife of respondent No.1, is respondent No.3.

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

4. The facts in brief are that on 07-12-2002, while the petitioner was proceeding in the auto-rickshaw bearing No.AP-36-V-5450 at Mulugu road to go to Warangal, on the way, when it reached M.G.M. Hospital, Warangal, at 5-45 p.m., since the driver of the auto-rickshaw driven it in a rash and negligent manner at high speed, it dashed against one Gadepaka Samuel and turned upside down, due to which, the petitioner including other occupants of the auto-rickshaw suffered

serious injuries. Even the concerned Station House Officer registered a case in Crime No.310 of 2002. The petitioner was immediately taken to Satya Hospital, Warangal, where he was treated as inpatient from 07-12-2002 to 12-12-2002 conservatively. He has also underwent treatment in Ganesh Orthopaedic Hospital, Hanamkonda, from 13-12-2002 to 31-12-2002. According to him, he spent Rs.35,000/- towards treatment. He was tractor driver by profession, 25 years old and earning Rs.3,000/- per month. Therefore, he sought Rs.1,00,000/- against respondents 1 and 2, owner and insurer, respectively, of the auto-rickshaw that involved in the accident.

Since the 1st respondent died, his legal representative is brought on record as 3rd respondent.

5. Respondent No.3, owner of the auto-rickshaw, remained *ex parte* before the Tribunal.

6. Respondent No.2, insurer of the auto-rickshaw, opposed the claim by raising various pleas.

7. Based on the pleadings, the Tribunal framed three (3) issues in the direction of fixing responsibility for the accident.

8. During enquiry, the petitioner, besides examining himself as PW.1, examined Dr. P. Surender Reddy, Orthopaedic Surgeon, who treated him, as PW.2 and marked Exs.A-1 to A-10 as well as Ex.X-1, to substantiate his claim. On behalf of the respondents, no evidence was adduced.

9. The Tribunal, on issue No.1, analysing the evidence on record, held it in favour of the petitioner. On issue No.2, taking note of the evidence of PW.2, who has assessed the disability at 30% basing on

the nature of injuries sustained by the petitioner, granted Rs.5,000/- towards loss of earnings for two months at Rs.2,500/- per month, Rs.6,000/- towards medical expenses, Rs.500/- towards transport charges, Rs.5,000/- towards pain and suffering and Rs.25,000/- towards 30% partial permanent disability, and, thus, awarded a total sum of Rs.41,500/- with interest at 7.5% per annum from the date of petition till realisation.

10. Dissatisfied with the amount awarded by the Tribunal, the instant appeal is preferred by the petitioner contending in the grounds of appeal that the Tribunal has not properly appreciated the evidence let in by the petitioner, and, therefore, sought to grant the balance amount.

11. Heard Sri K. Prabhakar Rao, learned counsel for the petitioner (appellant), and Sri V. Srinivas Rao, learned counsel for the 2nd respondent, insurance company.

12. It is mentioned in the cause title of the appeal that the 1st and 3rd respondents are not necessary parties. However, the 3rd respondent is none other than the legal heir of the 1st respondent, as stated hereinabove.

13. Perused the order under challenge and the evidence, both, oral and documentary, let in by the petitioner.

14. A perusal of the wound certificate, Ex.A-2, would reflect the following injuries:

“1) Fracture (Lt) hand Greivous RTA Fresh

(*Sic. Grievous*)

2) Dislocation Shoulder (Lt) Shoulder Greivous RTA Fresh

(*Sic. Grievous*)

3) Fracture Clavicle (Lt) Chest Greivous RTA Fresh

(*Sic. Grievous*)

4) Abrasion 3 cm x Forehead Simple RTA Fresh

3 cm Left side

5) Injury - Left hand Simple RTA Fresh”

15. Thus, it is clear that the petitioner sustained three grievous injuries and two simple injuries and among the three grievous injuries, the second injury is dislocation of left shoulder, whereas the other two injuries are on left hand and fracture of clavicle.

16. Though, the Tribunal has agreed with the petitioner’s stand that he sustained 30% disability, granted only a sum of Rs.25,000/-, but the same is on lower side. Therefore, the amount of Rs.25,000/- granted towards 30% disability is enhanced to Rs.60,000/-.

The Tribunal has granted Rs.5,000/- towards pain and suffering, which appears to be on lower side and, therefore, the same is enhanced to Rs.10,000/-. The Tribunal has granted Rs.5,000/- at Rs.2,500/- per month towards loss of temporary earnings. When kept in view, the nature of injuries sustained by the petitioner, he would not have been able to attend to some avocation, at least, for six months and, therefore, a sum of Rs.15,000/- is granted at Rs.2,500/- per month. The amount of Rs.6,000/- granted by the Tribunal towards medical expenses is maintained. Towards transport and attendant charges, the Tribunal granted only a sum of Rs.500/- and

Rs.1,000/- respectively, as such, the same are enhanced to Rs.1,000/- and Rs.3,000/- respectively. Towards extra nourishment, the Tribunal has not granted any amount and, therefore a sum of Rs.5,000/- is granted.

18. Thus, the petitioner is entitled to the claim amount, sought by him, of Rs.1,00,000/-(Rupees one lakh) [Rs.60,000/- + Rs.10,000/- + Rs.15,000/- + Rs.6,000/- + Rs.1,000/- + Rs.3,000/- + Rs.5,000/-] as against Rs.41,500/- awarded by the Tribunal, and the same is accordingly granted, while maintaining the rate of interest at 7.5% per annum, on the entire compensation, 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.**

19. Accordingly, the Civil Miscellaneous Appeal is allowed modifying the impugned award passed by the Tribunal by enhancing the compensation, as indicated above. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

April 2, 2015.

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