

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

-
M.A.C.M.A.No.1374 of 2005

JUDGMENT:

Having dissatisfied with the amount of Rs.27,000/- granted as compensation by order dated 03.09.2004 in O.P.No.438 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-VI Additional District Judge (Fast Track Court), Nizamabad (for short, 'the Tribunal') as against the claim of Rs.1,50,000/- laid under Section 166(1)(a) of the Motor Vehicles Act, 1988 (for short, 'the Act') for the injuries sustained by the petitioner in a road accident, the instant appeal is preferred seeking enhancement of compensation.

2. The appellant herein is the petitioner, while respondent Nos.1 and 2, who are the owner and insurer of the accident vehicle respectively, were respondents Nos.1 and 2 in the original petition.

3. For the sake of convenience, the parties hereinafter are referred to as they were arrayed before the Tribunal in the original petition.

4. Facts in brief are that on 07.12.2002, the petitioner was travelling along with others in an auto bearing registration No.AP 25U 2537 from Navipet to Basar, and on the way, since the driver of the said auto drove it in a rash and negligent manner at high speed, dashed a scooter and then the auto went off the road and turned upside down, due to which, she sustained fracture of mandible and other parts of her person and sustained permanent disability. The petitioner, claiming that she has undergone treatment in the hospital of Dr. D.Satyanarayana, Cosmetic Dental Surgeon, Nizamabad and spent Rs.50,000/- therefor and aged 40 years and she has been suffering with permanent disability and unable to pursue her activities as usual, sought Rs.1,50,000/- from respondent Nos.1 and 2, who are

the owner and insurer of the accident vehicle, in which she was travelling.

5. Both the respondents made their appearance and filed counters resisting the claim of the petitioner. Respondent No.2- Insurance Company has also raised various other pleas, which need no advertence, as there is no challenge to the order and decree from the Insurance Company.

6. Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry, the petitioner examined herself as P.W.1 besides examining Dr. D.Satyanarayana as P.W.2 and marked Exs.A.1 to A.21 to substantiate her claim; whereas, on behalf of respondent No.2, its Senior Assistant was examined as R.W.1 and marked Exs.B.1 and B.2, which are copies of report of the investigator and insurance policy of the accident vehicle.

7. On appraisal of evidence, both, oral and documentary, let in by the petitioner, the Tribunal favoured the petitioner by recording finding that only due to rash and negligent driving of the auto, the accident had occurred resulting injuries to the petitioner. On issue No.2, the Tribunal, somehow, did not agree with the doctor, who was examined as P.W.2, and discarded the disability certificate-Ex.A.8 issued by him on the ground that P.W.2 was not the member of the Medical Board constituted for the said purpose. However, the Tribunal did not disbelieve the factum of petitioner sustaining fracture of mandible, but, somehow, granted Rs.5,000/- towards the said injury and further granted Rs.6,000/- for the three simple injuries, at the rate of Rs.2,000/- per injury, besides granting Rs.10,000/- towards medical expenses and Rs.6,000/- towards temporary loss of earnings for three months, at the rate of Rs.2,000/- per month, and, thus, awarded a total sum of Rs.27,000/- with interest thereon at 9% per annum.

8. 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 brushing aside the medical evidence, more particularly, Ex.A.8-disability certificate, issued by P.W.2 and the Tribunal did not award compensation under all heads present and future, and, therefore, sought to enhance the compensation.

9. Heard Sri K.Sarala Mahender Reddy, learned counsel for the appellant-petitioner, and Sri Srinivasa Rao Vutla, learned Standing Counsel for respondent No.2-Insurance Company. The appeal against respondent No.1, who is owner of the accident vehicle, was dismissed for default on 03.01.2012. However, dismissal of the appeal for default against respondent No.1 is of no consequence to decide the quantum of compensation, in view of the decision of a Division Bench of this Court in ***Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others***^[1].

10. Perused the order and the evidence on record. Admittedly, the 2nd respondent-Insurance Company has not preferred any appeal challenging any of the findings recorded by the Tribunal. Therefore, there is no need to advert to the finding recorded by the Tribunal on issue No.1. So far as issue No.2 is concerned, as seen from the finding recorded by the Tribunal, it is true, Ex.A.8-disability certificate was issued by P.W.2, who is not a member of any Medical Board, and, therefore, the Tribunal was right in discarding Ex.A.8. However, granting Rs.5,000/- towards fracture of mandible without assigning any reasons and not adverting to pain and suffering is unjust, that it is on lower side, since the compensation that should be determined invariably has to be just and adequate. Hence, the said amount of Rs.5,000/- is enhanced to Rs.20,000/-, which includes pain and suffering also. So far as the amount of Rs.2,000/- for each simple injury granted by the Tribunal is concerned, the same is enhanced to

Rs.3,000/- making it a total sum of Rs.9,000/- as against Rs.6,000/-.

11. It is contended by the learned counsel for the petitioner that the evidence of P.W.2 would show that he received Rs.9,000/- towards treatment and the Tribunal somehow, did not grant the said amount. Thus, the evidence of P.W.2 reflects the same and, therefore, the amount of Rs.9,000/- is awarded besides Rs.10,000/- granted by the Tribunal towards medical expenses. The amount of Rs.6,000/- granted towards temporary loss of earnings for three months is not disturbed as the petitioner has not submitted any documents to show that she owned Ac.3-00 of land, but as seen from the evidence on record, more particularly, Ex.A.3-wound certificate, which shows that she was pursuing her profession as washer woman. The Tribunal has not granted any amount towards extra nourishment. Towards the same, a sum of Rs.5,000/- is granted keeping in view, the inconvenience undergone by the petitioner for the fracture of mandible. Besides the same, a sum of Rs.2,000/- is granted to the petitioner towards transport charges.

12. Thus, the petitioner is entitled to a total sum of Rs.61,000/- (Rupees sixty one thousand) as against Rs.27,000/- granted by the Tribunal, towards compensation and the same is accordingly granted with interest at the rate of 9% per annum on the amount of 27,000/- granted by the Tribunal and at the rate of 7.5% per annum on the enhanced amount of Rs.34,000/- from the date of petition till realization.

13. Accordingly, the instant appeal is allowed in part modifying the order passed by the Tribunal, by enhancing the compensation, as indicated above, and confirming the same in all other respects. There shall be no order as to costs.

14. As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, stand closed.

A. SHANKAR NARAYANA, J

19th August, 2015

siva

[\[1\]](#) 2001(1) ALT 495 (D.B.)