

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

MACMA No. 117 of 2006

Judgment:

Having got dissatisfied with the award of Rs.51,750/- as compensation, by the order, dated 16.09.2005, in MVOP No. 257 of 2000 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-VIII Additional District Judge (Fast Track Court), Chittoor, as against the claim of Rs.1,50,000/-, laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), the instant appeal is preferred by the petitioner, besides disallowing 25% of the amount determined by the Tribunal for the violation of policy conditions as there was triple riding on the two wheeler and amongst the three persons the petitioner happened to be one of the pillion riders.

2. For convenience sake, the parties hereinafter referred to as they were arrayed in the Original Petition before the Tribunal.

3. The facts, in brief, are that, on 16.12.1999, the petitioner along with one Sudhakar, to whom the scooter bearing registration No.AP-03D-1750 belongs, along with his brother B. Govindaswami Naidu were proceeding, driven by the said Govindaswami Naidu and, when they reached V. Kota – Kuppam road near Santha gate cross roads at about 9.00 AM, a jeep bearing registration No.AP-03D-5188, driven at high speed in a rash and negligent manner coming in opposite direction, dashed the scooter resulting injuries to the petitioner and other pillion rider and also the driver. The Sub-Inspector of Police, V.Kota also registered a case in Crime No.124 of 1999 against the driver of the jeep. According to the petitioner, he was immediately shifted to Devaraj Urs Government M.C. Hospital, Kolar, where he has undergone treatment for two weeks as an inpatient. He claims that he

was still undergoing treatment on the date of making claim petition as an outpatient. He also states that he spent Rs.20,000/- towards medical expenses and extra nourishment, aged 34 years old, and due to fracture of three ribs he has been unable to attend agricultural operations and lost his earning capacity. Therefore, sought Rs.1,50,000/- as compensation from the respondents 1 and 2 who are the owner and insurer of the jeep respectively.

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

5. The second respondent - Insurance Company opposed the claim contending that the driver of the scooter had no driving license and also raising various other pleas.

6. The Tribunal, in order to determine the claim, framed two issues about the responsibility for the accident. During enquiry, the petitioner examined himself as PW.1 besides examining one P. Sampurnamma as PW.2, P.S. Srinath Kumar, CAS as PW.3 and Dr. Shanmuga Sundaram as PW.4 and marked Exs.A1 to A7 besides exhibiting Exs.X1 and X2 through PW.3. On behalf of the respondents no witnesses were examined and no documents were filed.

7. The Tribunal, while tendering finding on issue No.1, having found from the evidence of PW.1 supported by Ex.A1 – certified copy of FIR and certified copy of charge sheet – Ex.A2 and even Ex.A3 – certified copy of judgment in Calendar Case that there was triple riding on the scooter, placing reliance on the decision of this Court in **United India Insurance Company Limited v. K. Anjaiah**^[1] and having observed that the owner of the scooter was also travelling on the same scooter and since permitted triple riding apportioned the liability of jeep owner at 75% and the owner of the scooter at 25% and, accordingly, answered the said issue.

8. On issue No.2, the Tribunal, discarding the evidence of PW.4 who issued disability certificate Ex.A5 mentioning 30% disability, keeping in view, the admission made by PW.4 that he never treated PW.1, granted a sum of Rs.20,000/- each for fracture of three ribs, making a total of Rs.60,000/-, besides granting Rs.5,000/- towards pain and suffering, Rs.4,000/- towards medical expenses, as Ex.A7 – bunch of medical bills reflects a total sum of Rs.3822/- incurred by the petitioner and, thus, arrived at Rs.69,000/- and worked out 75% thereof arriving at Rs.51,750/- and granted the same with interest at 9% p.a.

9. It is the aforesaid order which is under challenge in the instant appeal mainly contending in the grounds of appeal that the Tribunal was not right in deducting 25% fixing the liability to that extent on the owner of the Scooter, though, the respondents were owner and insurer of the opposite vehicle which was the jeep and the second main ground is that the amount awarded by the Tribunal is very meagre and the Tribunal has not awarded the amounts under other relevant heads such as extra nourishment, transport and attendant charges and, therefore, sought to grant the balance amount by setting aside the finding recorded on issue No.1, fixing the entire liability on the respondents 1 and 2 to pay the compensation.

10. Heard Sri T.C. Krishnan, learned counsel for the appellant, and Sri Srinivasa Rao Vutla, learned Standing Counsel for the second respondent – Insurance Company. Despite service of notice on the first respondent, none appears.

11. Perused the order and the evidence on record both, oral and documentary, let in by the petitioner.

12. Concerning the argument of the learned counsel for the appellant that, the Tribunal was not right in fixing 25% liability on the

owner of the Scooter and deducting proportionate amount from the amount of compensation determined by the Tribunal, there appears to be no substance in that argument in view of the fact that, the Tribunal, placing reliance on the decision in **K. Anjaiah's** case (supra), tendered such a finding. The facts-situation occurring in the said decision also reflects that there was triple riding and the two wheeler was hit by a lorry and since there was triple riding which was forbidden, contributory negligence was also attributed and 25% liability was fixed on the owner. The facts are akin to the fact-situation appearing in the instant case. Therefore, the said submission is without any merit. Therefore, fixing the liability at 25% and 75% respectively, on the owner of the scooter and owner of the jeep is confirmed.

13. Coming to the determination of compensation, the Tribunal granted Rs.60,000/- for fractures of three ribs, which appears to be reasonable as there would have been some inconvenience to the petitioner in attending the regular avocation, which he hitherto used to perform.

14. Learned counsel for the appellant also contended that 30% disability spoken to by PW.4 and the issue of Ex.A5 – disability certificate was not considered by the Tribunal without assigning any plausible reasons, therefore, sought to consider the partial permanent disability covered by Ex.A5. The Tribunal has assigned the reason that PW.4 did not treat PW.1 at any time as per the admission made by PW.4 and that, that was the reason the Tribunal did not incline to rely on Ex.A5, as seen from paragraph '20' of the order under challenge. This apart, as seen from Ex.A5, it would reflect that PW.4 has not elaborated as to how he assessed the disability of 30%. Even, he did not mention the degree of restriction of which of the limbs accounted for disability at 30% as mentioned by him in Ex.A5. Therefore, that

finding recorded by the Tribunal discarding Ex.A5 and the evidence of PW.4 thereon is confirmed.

15. Concerning the amount of Rs.4,000/- granted by the Tribunal towards medical expenses, the same is maintained, as the bunch of medical bills - Ex.A7 would reflect the total amount at Rs.3,822/-. The amount of Rs.5,000/- granted towards pain and suffering by the Tribunal is also maintained. Since no amount is granted towards extra nourishment, a sum of Rs.5,000/- is granted. It is not in dispute that the petitioner has undergone treatment as inpatient from 16.12.1999 to 27.12.1999 in Devaraj Urs and Jalappa M.C. Hospital, at Kolar. Certainly, in view of fracture to three right side ribs, the petitioner would not have been able to perform the agricultural operations at least for a period of six (6) months to get his normalcy. In view of the same, taking note of the fact that at least Rs.2,000/- per month he would have suffered towards temporary loss of earnings, a sum of Rs.12,000/- is granted. Thus, the petitioner is totally entitled to Rs.64,500/- (86,000/- x 75%) with interest at 7.5% p.a., by reducing the interest from 9% p.a., granted by the Tribunal as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**^[2].

16. Accordingly, the appeal is allowed in part modifying the impugned award passed by the Tribunal, by enhancing the compensation and reducing the rate of interest as stated supra. There shall be no order as to costs.

17. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal shall stand closed.

A. SHANKAR NARAYANA, J

Date: 19.03.2015
Nsr

[\[1\]](#) 2004(2) An.W.R. 193 (AP)

[\[2\]](#) 2013 ACJ 1403 = 2013(4) ALT 35