

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. Nos.3619 OF 2005 AND 335 OF 2006

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COMMON JUDGMENT:

Having got dissatisfied with the award of Rs.11,500/-(Rupees eleven thousand and five hundred) and Rs.16,500/-(Rupees sixteen thousand and five hundred), respectively, granted by the learned Chairman, Motor Accidents Claims Tribunal – cum – III Additional District Judge (Fast Track Court), Medak (for short 'the Tribunal') as compensation as against the claim of Rs.50,000/- each laid under Section 166 of Motor Vehicles Act,1988 (for short 'the Act'), by the orders and decrees, dated 28-02-2005, in M.V.O.P. Nos.100 and 101 of 2001, respectively, the respective petitioners preferred the instant appeals seeking enhancement of compensation for the injuries sustained by them.

2. The respective appellants herein are respective petitioners in the respective O.Ps. before the Tribunal, while respondent Nos.1 and 2, who are owner and insurer of Maruthi Car bearing registration No.TNO 7C 9780, respectively, are respondent Nos.1 and 2, respectively.

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

4. The facts, in brief, are that on 07-10-2000 at about 7.30 P.M., the petitioner in M.V.O.P. No.101 of 2001, who was a minor boy aged 13 years old on the date of accident, along with his friend Mr. M. Venkatesh, who is petitioner in other O.P. No.100 of 2001, was proceeding on foot by the side of road, and when they reached in front of a hotel run by Syed Zakir Hussain at Ramayampet, a Maruthi car bearing registration No. TNO 7C 9780 coming from Kamareddy side driven by its driver at high speed in

a rash and negligent manner, hit both of them, due to which, they received injuries. Immediately, they were shifted to Government Hospital and, thereafter, they were referred to CDR Hospital, where they incurred medical expenses. The Station House Officer, Ramayampet Police Station, also registered a crime for the offence punishable under Section 338 I.P.C. against the driver of car. The petitioners, therefore, sought to grant Rs.50,000/- each as compensation against respondent Nos.1 and 2, who are owner and insurer of the car.

5. Respondent No.1, owner of the car, filed counters in both cases opposing the claims. Also stating that since the vehicle was insured with the 2nd respondent, requested to dismiss the claim petition against it in both the claim petitions.

6. Respondent No.2 – Insurance Company also filed counters opposing the claims. It has disputed the treatment said to have undergone by both the petitioners in CDR Hospital and, finally, sought to dismiss the claim petitions against it. It has also taken a plea that the driver of car was not holding valid driving license at the relevant time.

7. Based on the pleadings, the Tribunal formulated identical point as to the entitlement of the petitioners for compensation. During inquiry before the Tribunal, the natural guardian and next friend of the petitioners as they were minors, were examined as PW.1, besides examining one P.S. Kumar, who is projected as Coordinator of CDR Hospital as PW.2 and marked Exs.A-1 to A7, respectively, in both O.Ps. to substantiate their claims. On behalf of the 2nd respondent, none were examined; however, Ex.B-1 copy of insurance policy was marked on consent.

8. The Tribunal, on appraisal of evidence, both, oral and documentary, let in by the petitioners, arrived at the finding that on account of rash and negligent driving of the car, the accident has occurred. Concerning quantum of compensation, the Tribunal has not believed the treatment said to have

undergone in CDR Hospital basing on the answers given by PW.2, in his cross-examination, to the effect that Jeevandhata Scheme was not in existence in 2000 and also basing on the circumstance that PW.2 is not competent witness to prove the medical bills said to have issued by CDR Hospital, raising doubt as to the doctors in Government Hospital at Ramayampet never obligated with the duty to refer them to a private hospital, and no reason is to be found in that regard. Therefore, discarding the medical expenses shown by the petitioners in each case, granted compensation, in the former OP, Rs.5,000/- towards simple injury; Rs.2,000/- towards extra nourishment; Rs.1,000/- towards medical assistance; Rs.500/- towards transport charges and Rs.3,000/- towards pain and suffering and, thus, granted Rs.11,500/- as compensation. In the latter OP, treating the injuries as grievous in nature basing on entries in Ex.A-2, certified copy of charge sheet showing that the offence under Section 338 IPC was registered against the driver of car, granted Rs.10,000/- towards injury; Rs.2,000/- towards extra nourishment; Rs.1,000/- towards medical assistance; Rs.500/- towards transport charges and Rs.3,000/- towards pain and suffering and, thus, granted a total sum of Rs.16,500/- as compensation.

9. It is the aforesaid orders which are under challenge in the instant appeals preferred by the petitioner, respectively, on identical grounds contending in the grounds that the Tribunal was not right in discarding the medical bills issued by CDR Hospital, despite the evidence of PW.2 and the Tribunal, somehow, overlooked the fact that it was not uncommon and unusual for the police to refer the patients to private hospital when proper facilities are not available in Government Hospitals and, therefore, ought to grant balance amounts.

10. Heard Sri K. Sitaram, learned counsel for the appellants – petitioners in both the cases, and Sri K. Ashok Rama Rao, learned counsel for respondent No.2 – Insurance Company in the former appeal, while Sri Nisaruddin Ahmed Jeddy, learned counsel for respondent No.2 in the latter appeal. None appears for the

1st respondent – insured, despite service of notice on it.

11. In the former appeal, charge sheet marked as Ex.A-2 shows that the petitioner sustained simple injury. Therefore, the amount of Rs.11,500/- granted by the Tribunal does not require any enhancement as the medical bills said to have issued by CDR Hospital were not believed by the Tribunal and the same cannot be disturbed. Therefore, the petitioner is not entitled to any enhancement.

12. Concerning latter appeal, on perusal of record, it shows that the Tribunal also rejected Ex.A-7, discharge summary, and Ex.A-6, medical bills, which finding recorded by the Tribunal in other petition is confirmed by this Court in the former appeal mentioned herein above. However, since the petitioner sustained grievous injury, the amount of Rs.10,000/- granted by the Tribunal basing on Ex.A-2 towards injury is enhanced to Rs.20,000/-, and towards pain and suffering, as against Rs.3,000/- granted by the Tribunal, enhanced to Rs.5,000/-, and towards transport charges as against Rs.500/- granted by the Tribunal, is enhanced to Rs.1,000/-. The amount of Rs.2,000/- granted towards extra nourishment and Rs.1,000/- towards medical assistance are maintained. Thus, in all, the petitioner is entitled to Rs.29,000/-(Rupees twenty nine thousand) as compensation as against the amount of Rs.16,500/- granted by the Tribunal. Concerning interest, the Tribunal granted the same at 9% per annum, but the same is reduced to 7.5% per annum as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**.

13. In the result, the former appeal – MACMA No.3619 of 2005 is dismissed, while the latter appeal MACMA No.335 of 2006 is allowed in part and the order and decree, dated 28-02-2005, in M.V.O.P. No.101 of 2001, passed by the Tribunal are modified, enhancing the compensation to Rs.29,000/-(Rupees twenty nine thousand) from Rs.16,500/-(Rupees sixteen thousand and five hundred) with interest thereon at 7.5% per annum from the date of petition till realization. There shall be no order as to costs in both the appeals.

14. As a sequel thereto, miscellaneous applications, if any, pending in these appeals, stand disposed of.

A. SHANKAR NARAYANA, J

April 01, 2015.

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