

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

-
M.A.C.M.A. No.803 of 2005

JUDGMENT:

The instant appeal is preferred by the petitioner in M.O.P.No.817 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Vizianagaram (for short, 'the Tribunal') having got dissatisfied with the amount of Rs.55,000/- granted as compensation by the order dated 15.12.2004 as against the claim for Rs.3,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act').

2. The appellant herein is the petitioner, while respondent Nos.1 to 6, who are the driver, owner and insurer of both the vehicles respectively, were respondents in the original petition.

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 26.05.2001 at about 9-00 a.m., the petitioner boarded a jeep bearing registration No.AP 30A 3532 at Bondapalli village to go to Atchuthapuram village, when it reached near Appannavalasa junction, another jeep bearing registration No.AP 30A 3044 came in opposite direction driven by the 1st respondent in a rash and negligent manner and dashed the jeep in which the petitioner was travelling, due to which, he sustained injuries and partial permanent disability, and, therefore, he sought Rs.3,00,000/- from respondent Nos.1 to 6. Respondent Nos.1 to 3 are the driver, owner and insurer of the jeep bearing registration No.AP 30A 3044, whereas the respondent Nos.4 to 6 concerned with the jeep, in which the petitioner was travelling, bearing registration No.AP 30A 3532.

5. Before the Tribunal, respondent Nos.1, 2, 4 and 5 remained *ex parte*. The 3rd respondent filed written statement which was adopted by the 6th respondent, since the Insurance Company is one and the same for both the vehicles, opposing the claim raising various pleas contending that the amount sought is excessive and arbitrary, and to dismiss the petition.

6. Basing on the said pleadings, the Tribunal framed four issues about the responsibility for the accident. During enquiry before the Tribunal, the petitioner examined himself as P.W.1 besides examining Dr.A.Sriramamurty as P.W.2 and marked Exs.A.1 to A.7 and Exs.X.1 and X.2; whereas, on behalf of the contesting respondent Nos.3 and 6, no witnesses were examined, but copies of insurance policies of both the vehicles were marked as Exs.B.1 and B.2 on consent.

7. The Tribunal, on appraisal of evidence on record, both, oral and documentary, let in by the parties, answered issue No.1 in favour of the petitioner holding that the accident had occurred due to rash and negligent driving of the 1st respondent, who is the driver of the opposite vehicle, but there was no negligence on the part of the 4th respondent, who is driver of the jeep in which the petitioner was travelling. On issue No.2, basing on Ex.A.2 and evidence of P.W.2 and also the contents of Ex.X.1 as the petitioner sustained fracture of Tibia of left foot and lateral aspect of left foot and also considering the disability of 25% shown in Ex.A.5-disability certificate and Ex.A.7-photograph, granted Rs.40,000/- towards loss of earnings and partial permanent disability, Rs.5,000/- towards pain and suffering for the grievous injury and Rs.10,000/- towards medical expenses and extra nourishment, and, thus, a total sum of Rs.55,000/- was granted with interest at 9% per annum recoverable from respondent Nos.1 to 3 by casting joint and several liability on them, while dismissing the claim

against respondent Nos.4 to 6.

8. Aggrieved of the aforesaid order, the petitioner preferred the instant appeal seeking enhancement of compensation contending in the grounds of appeal that the Tribunal totally ignored 25% disability sustained by the petitioner despite the same being assessed by P.W.2 and the amount granted was very meager, and, therefore, sought to grant the balance amount.

9. Heard Sri Jayanti SC Sekhar, learned counsel for the appellant-petitioner, Smt. A.Malathi, learned counsel for respondent Nos.3 and 6. It is recorded that respondent Nos.1 and 4 are not necessary parties. The appeal was dismissed against respondent Nos.2 and 5 for default on 04.01.2012, but it would not make any difference in deciding the controversy in the instant appeal.

10. Perused the order under challenge and the evidence, both, oral and documentary, let in by the parties respectively. Though, in view of the grounds of appeal, it is mentioned that P.W.2 assessed 25% disability, but it is factually wrong for the reason P.W.2 in his chief-examination itself specifically states that he was not a member of the District Medical Board, which issued Ex.A.5. Thus, the evidence of P.W.2 is of no assistance in proving the permanent disability said to have sustained by P.W.1. No doubt, the certificate issued by the District Medical Board cannot be ignored. But it is not automatic since it suffers from want of elaboration as to how the Board has arrived at 25% partial permanent disability. In the absence of such elaboration, it was incumbent upon the petitioner to examine one of the doctors of the Medical Board to explain as to how the Board has assessed 25% disability, in which direction, there is no positive evidence. However, as seen from the order passed by the Tribunal, the Tribunal taken into consideration the percentage of disability and granted Rs.40,000/-

towards loss of earnings and partial permanent disability together. It is no doubt true, the Tribunal has not adopted any formula by application of multiplier. However, there is no proof as to the income of the petitioner. Therefore, it is not desirable at this stage to probe into these aspects when there is nothing forthcoming from the evidence of P.W.1 as to his definite income. Under these circumstances, what is open to this Court is only to look at the nature of injuries and the sufferance undergone by the petitioner and grant compensation under the said head. Keeping in view, the fact that the petitioner has undergone treatment for one month as inpatient, the same is enhanced to Rs.60,000/- under the said head. So far as the amounts of Rs.5,000/- granted towards pain and suffering for the grievous injury is concerned, it is maintained. The amount of Rs.10,000/- granted towards medical expenses, transport charges and extra nourishment, which includes Rs.7,273-29 ps basing on Ex.A.6, is enhanced to Rs.15,000/- since the extra nourishment works out to only Rs.2,000/- and odd. Besides the same, since the Tribunal has not granted any amount towards attendant charges, a sum of Rs.5,000/- is granted under the said head.

11. Thus, the petitioner is totally entitled to a sum of Rs.85,000/- (Rupees eighty five thousand) as against Rs.55,000/- granted by the Tribunal towards compensation and the same is accordingly granted, with interest at 7.5% per annum from the date of petition till realisation, as against 9% granted by the Tribunal, on the entire compensation, as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**^[1].

12. Accordingly, the instant appeal is allowed in part modifying the impugned award passed by the Tribunal, by enhancing the compensation and reducing the rate of interest, as indicated above,

and confirming the same in all other respects. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

26th February, 2015

siva

[\[1\]](#) 2013 ACJ 1403