

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

MACMA No.555 OF 2005

JUDGMENT:

The petitioner, having got dissatisfied with the amount of Rs.33,000/-granted as compensation in O.P.No.1062 of 2001 by the order dated 26.07.2004 by the Chairman, Motor Accidents Claims Tribunal-cum- III Additional Chief Judge, Hyderabad (for short "Tribunal"), against the claim of Rs.1,50,000/- laid under Section 166 of the Motor Vehicles Act, 1988, preferred the present appeal.

2. The appellant herein is the claimant, while respondents 1 and 2 herein, who are owner of the ambassador car bearing No.AP U 5307, its insured, and insurer respectively, are respondents 1 and 2 respectively, in the O.P before the Tribunal.

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

4. The facts, in brief, are that on 02.12.2000 at about 08.00 AM, while the petitioner was travelling on his luna and when he reached near Noorshah School, an Ambassador car bearing No.AP U 5307 came in opposite direction, driven at high speed, and dashed the luna, due to which, the petitioner fell down and sustained fracture to left leg and other multiple injuries all over the person and immediately he was shifted to Osmania General Hospital for treatment. The Station House Officer, Chandrayanagutta Police Station, registered a case in Crime No.264 of 2000 under Section 337 IPC. The petitioner stated that he was working as a plumber earning Rs.2,000/- per month. Due to the accident, the petitioner could not continue his profession. The petitioner, therefore, sought compensation of Rs.1,50,000/- with interest at 18% per annum making respondents 1 and 2 jointly and severally liable to pay compensation.

5. Respondent No.1 remained *ex parte* before the Tribunal. The 2nd respondent opposed the claim by taking a specific stand as to violation of terms and conditions of the policy, as the driver of the car did not possess valid driving licence at the time when the accident took place. Hence, the insurer sought to dismiss the claim of the claimant.

6. Based on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry, before the Tribunal, the petitioner himself examined as PW.1 and got marked Exs.A1 to A.6. On behalf of the

respondents, none were examined, but Ex.B.1- copy of insurance policy was marked.

7. On appraisal of evidence, both, oral and documentary, the Tribunal held issue Nos.1 and 2 in favour of the claimant observing that due to rash and negligent driving of the driver of the ambassador car, the accident had occurred and consequently, the Tribunal granted Rs.25,000/- towards pain and suffering for the grievous injury sustained to left leg, Rs.2,000/- towards medical expenses, Rs.4,000/- towards temporary loss of earnings for three months by taking the income of the petitioner as Rs.15,000/- per annum and Rs.2,000/- towards travelling and extra nourishment expenses. Thus, a total sum of Rs.33,000/- was granted with interest at 6% per annum.

8. Heard learned counsel for the claimant - appellant and no representation for respondent No.2 – insurance company. Though notice served on the 1st respondent-owner of the ambassador car, none appears for him. However, the same 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] wherein it is held that:

“If the claims Tribunal records a finding that the accident had taken place due to the rash or negligent driving of the driver of the motor vehicle and if such finding is not challenged either by the Insurance Company or by the owner of the motor vehicle, the question that arises in appeal filed against the orders of the Tribunal by the claimants is only with regard to the determination of just, fair and reasonable quantum of compensation and therefore, there cannot be any bar to decide the quantum of compensation against the Insurance Company even in the absence of owner of the vehicle to the extent of the statutory liability of the Insurance. But the quantum of compensation cannot be decided over and above the statutory liability of the Insurance Company in the absence of the owners, but the question of the statutory liability of the Insurance Company survives for consideration at the appellate stage.”

9. Now, the short point that arises for consideration is -whether the claimant is entitled to enhancement of compensation?

10. Perused the oral and documentary evidence let in by the petitioner. Exs.A.3, A.5 and A.6 would prove that the petitioner sustained fracture to his left leg which cannot be disbelieved. Therefore, the amount of Rs.25,000/- granted towards pain and suffering is maintained. So far as Rs.2,000/- granted towards medical expenses is concerned, the same is also maintained, in view of the fact that the petitioner spent Rs.1,473.18 paise as per Ex.A.4 – medical bills and also that he was treated free of cost in Osmania General Hospital. So far as temporary loss of earnings is concerned, the Tribunal has taken the income of the petitioner at Rs.15,000/- per

annum and granted Rs.4,000/-, on the ground that the petitioner might have taken three months rest in view of the injuries sustained by him. Since the grievous injury sustained by the petitioner was to his left leg, it must have taken (6) six months to get normalcy. Therefore, Rs.12,000/- is granted towards temporary loss of earnings by taking the income of the petitioner at Rs.2,000/- per month. The Tribunal granted Rs.2,000/- towards travelling and extra nourishment. However, keeping in view, the nature of the injury suffered by the petitioner, Rs.9,000/- towards extra nourishment and transportation charges is granted. Thus, the petitioner is totally entitled to Rs.48,000/- (Rs.25,000/- + Rs.2,000/- + Rs.12,000/- + Rs.9,000/-) by way of enhancement of compensation, as against Rs.33,000/- granted by the Tribunal. Concerning the interest, the Tribunal granted 6% per annum. In view of the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**^[2] the interest is enhanced from 6% to 7.5% per annum.

11. Accordingly, the Appeal is allowed-in-part modifying the award and decree of the Tribunal by enhancing the compensation from Rs.33,000/- to Rs.48,000/- and rate of interest from 6% to 7.5% per annum, as indicated above. There shall be no order as to costs.

12. As a sequel, Miscellaneous Applications, if any, shall stand disposed of.

A. SHANKAR NARAYANA, J

February 13, 2015.
Kvrm

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DATE: 13.02.2015

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

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