

**HON'BLE SRI JUSTICE A. SHANKAR
NARAYANA**

M.A.C.M.A. No.887 OF 2006

JUDGMENT:

Not satisfied with the award of Rs.40,000/- (Rupees forty thousand) granted by the learned Chairman, Motor Accidents Claims Tribunal – cum – District Judge, Karimnagar (for short 'the Tribunal'), as compensation, by order and decree, dated 12-01-2006, in O.P. No.233 of 2002, for the injuries sustained by the petitioner as against the claim of Rs.6,00,000/- (Rupees six lakhs) laid under Section 166 (1) (a) of the Motor Vehicles Act, 1988 (for short 'the Act'), the instant appeal is filed by the petitioner under Section 173 of the Act.

2. The appellant herein is petitioner in the O.P. before the Tribunal, while respondent Nos.1 to 3, who are driver, owner and insurer of auto-rickshaw bearing registration No.AP 13V 6688, respectively, are respondent Nos.1 to 3, respectively and respondent No.4, who was brought on record as legal heir of respondent No.2, who died during pendency of the petition, is respondent No.4

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

4. The facts, in brief, are that on 19-10-2001, while the petitioner was travelling along with others in an auto-rickshaw bearing registration No.AP 13V 6688 owned by the 2nd respondent, driven by the 1st respondent and insured with 3rd respondent and when it reached near Quarter No.B-12, Godavarikhani, at about 6.30 P.M., LML Scooter bearing registration No.AP 15A 804

coming from opposite direction, since the driver of auto-rickshaw drove it in a rash and negligent manner, suddenly swerved the auto-rickshaw towards left side, as a result of which, the engine of scooter hit the right leg of petitioner causing fracture. Even, a case in Crime No.110 of 2001 was registered by the concerned police under Section 338 IPC against the driver of auto-rickshaw. The petitioner projecting himself as he incurred huge expenditure by getting admitted in various hospitals and on account of gravity of fractures, he would have become unfit for service and there was likelihood of termination of service, and, therefore, sought to grant Rs.1,70,000/- under special damages and Rs.4,30,000/- under general damages, making a total of Rs.6,00,000/- as compensation.

5. Since the 2nd respondent, who is owner of the vehicle, died, his legal representative was brought on record as respondent No.4, who also remained *ex parte* before the Tribunal. The driver of auto-rickshaw, who is respondent No.1, also remained *ex parte*.

6. Only Respondent No.3 – Insurance Company opposed the claim, raising various pleas.

7. Based on the pleadings, the Tribunal framed three issues about fixing responsibility for the accident. During inquiry, on behalf of petitioner, besides examining himself as PW.1, also examined one D. Ravinder as PW.2 and Dr.V. Surya Prakash Rao as PW.3 and marked Exs.A-1 to A-12. On behalf of the contesting respondent, one M. Veeraswamy was examined as RW.1 and marked copy of insurance policy as Ex.B-1.

8. The Tribunal, on issue No.1, on appraisal of evidence, held it in favour of petitioner, disagreeing with the stand taken by

the 3rd respondent. On issue No.2, the Tribunal taking into consideration the treatment at Government Area Hospital, Godavarikhani and at Nizams Institute of Medical Sciences (NIMS), Hyderabad, as evidenced by Exs.A-2 and A-5, which are wound certificate issued by the Medical Officer, Area Hospital, Godavarikhani and discharge record from NIMS, respectively, by scanning the evidence, granted a sum of Rs.40,000/- towards pain and suffering and all other heads, with interest at 7.5% per annum thereon.

9. It is the aforesaid order which is under challenge in the instant appeal preferred by the petitioner contending in the grounds of appeal that the Tribunal did not properly appreciate the evidence of PW.3, who has spoken to about disability between 5% and 20% the petitioner alleged to have suffered and granting *lump sum* amount of Rs.40,000/- without quantifying under different heads is improper and even granting interest at 7.5% per annum as against 12% per annum is not correct and, therefore, sought to grant balance amount.

10. Heard Sri Venkateshwar Varanasi, learned counsel for the appellant – petitioner and Sri Nisaruddin Ahmed Jeddy, learned counsel for respondent No.3 – Insurance Company. In fact, Respondent No.4 is also reported died, but no steps were taken, however, she remained *ex parte* before the Tribunal. As per the cause title of grounds of appeal, it is mentioned that respondent No.1, driver of the auto-rickshaw, is not a necessary party.

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

12. The Tribunal excluded the partial permanent disability spoken to by PW.3 between 5% and 20% on the premise that the evidence of PW.3 also shows that disability can be cured by physiotherapy and further basing on the circumstance that the salary was not reduced due to so-called disability and, thereby, granted a sum of Rs.40,000/- in *lump sum* by the Tribunal without quantifying amounts under different heads as compensation.

13. As seen from the evidence of PW.3 and Exs.A-2 and A-5 it is clear that the petitioner sustained fracture of right tibia and fibula in a road accident that took place on 19-10-2001 and disfiguration of right hip and even he was admitted in NIMS ten days thereafter for management of plastic surgery which was done on 08-11-2001 and discharged on 16-11-2001 with an advice of follow up treatment, the Tribunal has granted Rs.310/- under Ex.A-6 by discarding the balance amount on the ground that there was facility of reimbursement for the petitioner as he was an employee of Singareni Collieries Company Limited.

14. Thus, the evidence of PW.3 itself makes it abundantly clear that permanent disability was between 5% and 20% and also can be cured by physiotherapy, by relaxing the restriction of movements of hip knee and ankle joint. There is nothing on record through the evidence of PW.1 that he has undergone physiotherapy, but, still, suffering with restricted movements. Therefore, it is difficult to accede to the stand of petitioner that he is suffering from partial permanent disability.

15. However, keeping in view, the nature of injuries sustained by the petitioner, that being fracture of right tibia and fibula and disfiguration of right hip, certainly, the petitioner is

entitled to Rs.50,000/- towards injury and pain and suffering put together, since he would have made to suffer with severe pain for considerable period as seen from the positive photographs marked as Ex.A-9, where mark is clearly visible with slight deformity below the right leg knee portion. This apart, the petitioner is also entitled to a sum of Rs.10,000/- towards extra nourishment. Certainly, the petitioner must have gone on leave for at least three months, though, he has not filed any certificate therefor. However, PW.1 asserted that he has been on leave for 207 days, which works out to around seven months. He was drawing a salary of Rs.13,000/- and, for (07) months, it works out to Rs.91,000/- and, the same is granted. Towards attendant charges and transport charges, a sum of Rs.10,000/- is granted. Thus, in all, the petitioner is entitled to a sum of Rs.1,61,000/- (Rupees one lakh and sixty one thousand). The interest granted by the Tribunal at 7.5% per annum is maintained as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**^[1].

16. In the result, the appeal is allowed in part, and the order, dated 12-01-2006, in O.P. No.233 of 2002, passed by the Tribunal is modified, enhancing the compensation to Rs.1,61,000/- (Rupees one lakh and sixty one thousand) from Rs.40,000/- granted by the Tribunal with interest thereon at the rate of 7.5% from the date of petition till realization. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

March 13, 2015.
Mgr

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