

HON'BLE SRI JUSTICE A. SHANKAR

NARAYANA

M.A.C.M.A. No.1457 OF 2005

JUDGMENT:

Dissatisfied with the award of Rs.25,000/- (Rupees twenty five thousand) as compensation for the injuries sustained by the petitioner in a road accident granted by the learned Chairman, Motor Accidents Claims Tribunal – cum – V Additional District Judge (Fast Track Court), Ranga Reddy District at L.B. Nagar, by order and decree, dated 15-03-2004, in O.P. No.1152 of 1999, as against the claim of Rs.1,00,000/- (Rupees one lakh) laid under Section 166 of the Motor Vehicles Act, 1988, (for short 'the Act') read with Rule 455 of the Andhra Pradesh Motor Vehicles Rules, 1989, , the appellant - petitioner preferred the instant appeal under Section 173 of the Act, seeking enhancement of compensation.

2. The appellant herein is petitioner in the O.P. before the Tribunal, while respondent Nos.1 and 2, who are owner and insurer of lorry bearing registration No.ABP 8881, respectively, are respondent Nos.1 and 2, respectively.

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 08-09-1999 at about 1.40 p.m., the petitioner was riding his bicycle from Lingampally towards Hyderabad, and when he reached NCB, Telecom Nagar, Gachibowli, a lorry bearing registration No.ABP 8881, which was also proceeding in the same direction, driven by its driver in a rash and negligent manner, hit the bicyclist from behind, due to which,

he sustained grievous injuries. He was shifted to Gandhi Hospital, Secunderabad, where he was treated as in-patient and, thus, he sought Rs.1,00,000/- as compensation by laying claim petition.

5. Respondent No.1, owner of the lorry, remained *ex parte* before the Tribunal.

6. Respondent No.2 filed its counter opposing the claim.

7. The Tribunal has framed three issues in the direction of fixing responsibility for the accident.

8. During inquiry before the Tribunal, the petitioner examined himself as PW.1 and marked Exs.A-1 to A-7, whereas, on behalf of respondent No.2 – Insurance Company, no witnesses were examined, but, the copy of insurance policy was marked as Ex.B-1 on consent.

9. The Tribunal on appraisal of evidence held issue No.1 in favour of the petitioner, holding that the driver of the lorry was responsible for the accident, as he drove it in a rash and negligent manner occasioning the accident. On issue No.2, while referring to the description of the injuries finding place in the medical certificate and other documentary evidence through Exs.A-4 to A-7 and also referring to the grafting being done to his left foot and finding that the petitioner has not sustained any grievous injury, granted a total sum of Rs.25,000/- towards all the heads with interest at 9% per annum thereon.

10. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the Tribunal has not

properly appreciated the evidence on record and that the Tribunal has not taken into consideration the sufferance he has undergone and he lost even ankle skin and muscle due to the accident, and he had undergone treatment in Gandhi Hospital, Secunderabad, for a period of 10 months after discharge from the Hospital and, therefore, he sought to grant balance amount.

11. Heard Sri B. Parameswara Rao, learned counsel for the appellant, and Sri P. Bhanu Prakash, learned Standing Counsel for respondent No.2. The appellant has already endorsed in the cause title of the appeal that respondent No.1 is not a necessary party.

12. Now, the only short question that arises for consideration is whether the compensation granted by the Tribunal is just and adequate or, whether the petitioner is entitled to any enhancement of compensation?

13. Perused the evidence on record and the order passed by the Tribunal which is under challenge herein. It is true that the petitioner has not suffered any fracture to his left leg in the accident. It is also equally true that there was surgical intervention as asserted by the petitioner as PW.1. The discharge card, which is marked as Ex.A-5, reflects that the petitioner was treated from 09-09-1999 to 18-09-1999 having admitted on 08-09-1999 as inpatient, during which period skin grafting was done and debridement of wound for the crush injury to the left foot, and he was advised for review and it also appears that he attended for review constantly as directed by the doctor. The Tribunal has also recorded a definite finding that the petitioner has taken follow up treatment for a period of 9 to 10 months.

14. The material on record would show that the petitioner was a plumber. Though, he claimed that he was earning Rs.3,000/-, aged 35 years, but there is no tangible material on record to prove his monthly earnings at that rate. Further, earnings of the petitioner are of any consequence for the reason that no partial permanent disability is sustained by him. Even he admitted in his cross-examination that he did not sustain any grievous injury. However, as seen from the order under challenge, certainly, the amount awarded by the Tribunal is on lower side compared to the sufferance the petitioner had undergone during the relevant period. Therefore, the amount of Rs.25,000/- awarded by the Tribunal can be construed towards the injury, pain and suffering and other medical expenses. The Tribunal has not granted any amount towards temporary loss of earnings. The petitioner must have disabled to attend to his plumbing work for at least six (06) months. Taking the same into account, @ Rs.2,000/- per month for six months, a sum of Rs.12,000/- is granted under the said head. The petitioner is also entitled to Rs.5,000/- towards extra nourishment, and another Rs.5,000/- towards transport charges, as the petitioner attended for review for about 9 to 10 months continuously. Thus, in all, the petitioner is entitled to a sum of Rs.47,000/- [Rs.25,000/- + Rs.12,000/- + Rs.5,000/- + Rs.5,000/-] as compensation.

15. Concerning the rate of interest, Tribunal granted it at 9% per annum and the same is confirmed. However, on the enhanced amount, interest at the rate of 7.5% per annum is granted in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**^[1].

16. In the result, the appeal is allowed in part, and the order and decree, dated 15-03-2004, in O.P. No.1152 of 1999, passed by the Tribunal, are modified enhancing the compensation to Rs.47,000/- (Rupees forty seven thousand) from Rs.25,000/- (Rupees twenty five thousand) with interest at the rate of 9% per annum on Rs.25,000/- and at the rate of 7.5% per annum on the enhanced amount of Rs.22,000/- (Rupees twenty two thousand) 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

November 24, 2015.

Mgr

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