

HON'BLE SRI JUSTICE A. SHANKAR

NARAYANA

C.M.A. No.2584 OF 2004

JUDGMENT:

The instant appeal is preferred by the petitioner, who said to have sustained injuries in a road accident, not satisfied with the award of Rs.50,000/- (Rupees fifty thousand) as against the claim of Rs.1,00,000/-(Rupees one lakh) laid under Section 166 of Motor Vehicles Act, 1988, read with Rule 455 of Andhra Pradesh Motor Vehicles Rules, 1989, by order and decree, dated 03-09-2003, in O.P. No.568 of 1999, passed by the learned Chairman, Motor Accidents Claims Tribunal – cum – Additional District Judge, Nizamabad (for short 'the Tribunal'), 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 Jeep bearing registration No.MH 26C 395, 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 17-01-1998, the petitioner was travelling in a Jeep bearing registration No.MH 26C 395 from Nizamabad to proceed to Bhainsa, and at about 12.30 P.M., when the Jeep reached near Abbapur at Dharmaram Cross-roads, since the driver of the jeep drove it in a rash and negligent manner at high speed, it turned upside down, resulting in fracture to left leg and skull fracture. According to the petitioner, he was shifted to

Government Head-quarters hospital at Nizamabad and admitted therein as in-patient and spent Rs.45,000/- towards medicine and extra-nourishment. Since he suffered permanent and partial disablement on account of the accident, he filed claim petition seeking compensation of Rs.1,00,000/- against respondent Nos.1, and 2 being the owner and insurer of the jeep.

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

6. Respondent No.2 – Insurance Company opposed the claim by raising various pleas.

7. Based on the pleadings, the Tribunal framed three issues about the responsibility for the accident.

8. During inquiry before the Tribunal, the petitioner besides examining himself as PW.1 has examined Dr.L. Ramulu as PW.2 and marked Exs.A-1 to A-4. On behalf of respondent No.2, RW.1 was examined and Exs.B-1 and B-2 were marked.

9. The Tribunal, on appraisal of evidence on record, held issue No.1 in favour of the petitioner. On issue No.2, basing on the evidence of PW.2 and Exs.A-3 and A-4, granted Rs.30,000/- towards injuries; Rs.10,000/- towards medicines and extra-nourishment and another sum of Rs.10,000/- towards past and future pain and suffering and, thus, a total sum of Rs.50,000/- was granted as compensation with interest at 9% per annum.

10. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that despite clinching evidence on record, both, oral, through PW.2 and documentary,

through Exs.A-3 and A-4, the Tribunal granted meager amount, and ought to have granted Rs.1,00,000/- as compensation claimed by the petitioner in his petition and, sought to grant balance amount.

11. Heard Sri Venkateshwar Varanasi, learned counsel for the appellant. Respondent No.1, though, served with notice, none appears for him.

12. Perused the order and the evidence on record, both, oral and documentary let in by the petitioner and the 2nd respondent.

13. The specific plea of the petitioner is that soon after the accident, he was shifted to Government Head-quarters Hospital at Nizamabad, where he was treated as in-patient and spent Rs.45,000/- towards medicines and extra nourishment. As seen from the documentary evidence adduced by him, Ex.A-3 is medical certificate issued by one Dr. T. Narsing Rao, who was running a private medical clinic under the name and style 'Tirumala Hospital' at Nizamabad; Ex.A-4, disability certificate, issued by another doctor, by name, Dr. L. Ramulu which appears to have issued in his private capacity. Despite there-being a Medical Board constituted at the District Head Quarters in Nizamabad, no reasons are forthcoming as to why the petitioner has chosen to approach Dr. L.Ramulu. Thus, it is clear that the petitioner, though, puts forth a specific stand that soon after the accident, he was shifted to Government Head Quarters Hospital, Nizamabad and was treated as in-patient, still, he did not incline to secure certified

copy of the medical record from the said hospital, nor did he make any attempt to summon the record and examine the doctor, who treated him in the Government District Head Quarters Hospital at Nizamabad. That itself gives rise to any amount of suspicion as to the reliability on Exs.A-3 and A-4.

14. In view of the fact that the petitioner has not chosen to file the medical record from the Government District Head Quarters Hospital, Nizamabad, it appears that he deliberately withheld the said record. Therefore, the petitioner is not entitled to any enhancement and, as such, the appeal stands dismissed.

15. Accordingly, the appeal is dismissed. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

June 19, 2015.

Mgr