

HON'BLE SRI JUSTICE A. SHANKAR

NARAYANA

C.M.A. No.2345 OF 2004

JUDGMENT:

Having got dissatisfied with the award of Rs.20,000/- (Rupees twenty thousand) made by the learned Chairman, Motor Accidents Claims Tribunal – cum – IV Additional District Judge, (II Fast Track Court), Nalgonda, as compensation as against the claim of Rs.75,000/- (Rupees seventy five thousand) laid under Sections 166 and 140 of the Motor Vehicles Act, 1988 (for short 'the Act') read with Rule 455 of the Andhra Pradesh Motor Vehicles Rules, 1989, by order and decree, dated 25-03-2004, in O.P. No.643 of 2001, 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 auto-rickshaw bearing registration No.AP 13V 653, 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 fact-situation occurring in the instant case is, that on 21-12-1998, the petitioner was travelling in an Auto-rickshaw bearing registration No.AP 13V 653 from Bhongir towards Hyderabad on his personal work, and when the auto-rickshaw reached near Anantharam bus stop, since the driver of the auto-rickshaw drove it in a rash and negligent manner, it turned upside

down and fell on the left side of the road, due to which, he and other inmates of the auto-rickshaw sustained injuries. The petitioner was shifted to Government Hospital, Bhongir in another auto-rickshaw for treatment. Stating that he sustained grievous and simple injuries, claimed a sum of Rs.75,000/- as compensation against respondent Nos.1 and 2 being owner and insurer of the auto-rickshaw, respectively.

5. Respondent No.1, owner of the auto-rickshaw, remained *ex parte* before the Tribunal.

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

7. The Tribunal, basing on the pleadings, framed the following three issues about the responsibility for the accident.

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- 1) Whether the petitioner sustained injuries in the motor vehicle accident and if so, whether the accident occurred due to the rash and negligent driving by the driver of the auto bearing No.AP 13VB 653?
- 2) Whether the petitioner is entitled to any compensation, if so, to what amount and by whom it should be paid?
- 3) To what relief? ”

8. During inquiry before the Tribunal, the petitioner examined himself as PW.1 and marked Exs.A-1 to A-4, whereas, On behalf of respondent No.2 – Insurance Company, no witnesses were examined, but copy of insurance policy cover note was marked as Ex.B-1 on consent.

9. On issue No.1, the Tribunal on appraisal of evidence on record held it in favour of the petitioner. On issue No.2, basing on Ex.A-2 - wound certificate, which shows that the petitioner sustained a grievous injury which was fracture to lateral end of left

clavicle and other injuries being simple, the Tribunal awarded Rs.20,000/- towards compensation 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 and, though, the petitioner suffered permanent disability, the Tribunal awarded a meager sum of Rs.20,000/- and, therefore, sought to grant the balance amount.

11. Heard Sri M. Rajamalla Reddy, learned counsel for the appellant – petitioner. No representation for respondent No.2.

i) The notice sent to respondent No.1 returned without service and, thereafter, at request, the learned counsel has taken out personal notice, wherein the endorsement shows that no such person is available in the said address. When the address mentioned in the cause title of the instant appeal compared with the address shown in the order and also the petition, they are one and the same. Therefore, though, notice was not served, since respondent No.1 remained *ex parte* and suffered decree, non-service on him is of no consequence.

12. Admittedly, there is no dispute in regard to the manner in which the accident had taken place. It is not in dispute that the petitioner sustained multiple injuries viz., i) lateral end of left clavicle, ii) abrasion over left scapula, iii) lacerated injury of 2" x 1/2" both above and below the medial malleolus of right ankle, and iv) abrasion over left elbow.

13. As per the endorsement of Civil Assistant Surgeon,

Community Hospital, Bhongir, the injuries were sustained within one or two hours before medical examination of the petitioner was done. Even the Civil Assistant Surgeon has also endorsed that X-ray report reveals that the petitioner sustained fracture to lateral end of left clavicle and it is grievous in nature. Thus, the petitioner sustained three simple injuries and one grievous injury. So far as the simple injuries are concerned, the petitioner is entitled to Rs.3,000/- each and, thus, a sum of Rs.9,000/- is granted. So far as the grievous injury is concerned, keeping in view, the sufferance he had undergone on account of the fracture to lateral end of left clavicle, which would have also caused inconvenience to him in pursuing daily pursuits, a sum of Rs.25,000/- is granted towards injury and pain and suffering. Towards attendant charges, transport and extra nourishment, another sum of Rs.10,000/- is granted. Thus, in all, the petitioner is entitled to a sum of Rs.44,000/- [Rs.9,000/- + Rs.25,000/- + Rs.10,000/-] as compensation.

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

15. In the result, the appeal is allowed in part, and the order and decree, dated 25-03-2004, in O.P. No.643 of 2001, passed by the Tribunal, are modified enhancing the compensation to Rs.44,000/- (Rupees forty four thousand) from Rs.20,000/- (Rupees twenty thousand) with interest at the rate of 9% per annum on Rs.20,000/- and at the rate of 7.5% per annum on the

enhanced amount of Rs.24,000/- (Rupees twenty four thousand) from the date of petition till realization. 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

November 23, 2015.

Mgr

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