

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CMA No. 2767 of 2004

Judgment:

Having not satisfied with the amount of Rs.2,000/- granted by the Tribunal towards compensation, by the order, dated 03.04.2000, in MVOP No.301 of 1998 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Kurnool, as against the claim of Rs.75,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), the instant appeal is preferred by the petitioner seeking enhancement of compensation.

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the Original Petition before the Tribunal.

3. The facts, in brief, are that on 10.11.1996, the petitioner was travelling in an Auto bearing registration No.AP-13T-9539 along with others and due to the rash and negligent driving of the Auto driver it met with an accident in Nandyal town. The petitioner suffered fracture of his left leg and, therefore, he claimed Rs.75,000/- as compensation under Section 166 of the Act from the respondents 1 and 2 who are the owner and insurer of the Auto respectively.

4. Before the Tribunal, the first respondent remained *ex parte*. The second respondent opposed the claim by raising various pleas.

5. The Tribunal framed the following issues in order to fix the responsibility for the accident.

“1. Whether the accident occurred due to rash or negligent driving of the Auto bearing No.AP-13-T-9539?

2. Whether the petitioner is entitled to receive compensation, if so, to

what amount and from which of the respondents?”

6. During enquiry, the petitioner alone examined himself as PW.1 and marked Exs.A1 to A4, which are certified copies of FIR, wound certificate, charge Sheet and judgment in Calendar Case No.45 of 1996 on the file of Special Judicial Magistrate of Second Class, Nandyal. On behalf of the second respondent – Insurance Company, no witnesses were examined and no documents were filed.

7. The Tribunal, on appreciation of the evidence on record, held issue No.1 in favour of the petitioner. On issue No.2, the Tribunal, having found two injuries on perusal of Ex.A2 – wound certificate, granted a sum of Rs.2,000/- for the injuries sustained by the petitioner with interest at 12% p.a., from the date of petition till realisation.

8. Aggrieved by the compensation granted by the Tribunal as meagre, the petitioner preferred the instant appeal contending in the grounds of appeal that the Tribunal has not appreciated the evidence at all and went wrong in granting Rs.2,000/- as against Rs.75,000/- claimed by him, though, he suffered fracture to his left leg and, therefore, sought to grant balance amount.

9. No representation for the appellant and even there is no representation for the second respondent – Insurance Company. The instant CMA is dismissed against the first respondent for default, by the orders of this Court, dated 06.11.2003. Since the first respondent suffered the decree having remained *ex parte* before the Tribunal, the dismissal of the instant CMA against him is of no consequence in view of the decision of a Division Bench of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma**.

10. Perused the order and the evidence on record both, oral and documentary, let in by the petitioner. Ex.A4 is the certified copy of judgment in Calendar Case No.45 of 1996 on the file of Special Judicial Magistrate of Second Class, Nandyal, reflecting that the driver of the first respondent's Auto was convicted under Section 252 Cr.P.C., and sentenced to pay a fine of Rs.500/- and in default to undergo Simple

Imprisonment for one month for the offence punishable under Section 338 IPC. Ex.A2 is the relevant document which is wound certificate. The description of injuries as recorded in Ex.A2 are thus.

“1. A lacerated injury of size 1” x 1” x 1” over the skin of Lt. Tibia 4” above the Lt ankle joint. Active bleeding was seen. It was surrounded by a diffuse contusion. Crepitis present.

2. An abrasion of size 1” x 1” on the front of Lt. knee present.

Pt. absconded on the day of admission. He is produced before me against on 09.12.1996.

MLC X-ray No.32/96, dated 09.12.1996 taken in Area Hospital, Nandyal.

X-ray Lt. leg: AP & lat. Wound: Fracture of shaft of Lt. Tibia e callus seen.

I am of opinion that the above injury No.1 is grievous and No.2 is simple in nature.”

11. It is no doubt true that the Doctor who issued the original of Ex.A2 was not examined, but the recitals of Ex.A2 cannot be discarded for the reason that it was issued by the Civil Assistant Surgeon, Area Hospital, Nandyal. Thus, Ex.A2 proves that the petitioner sustained fracture of shaft of left tibia with callus and even the Doctor opined that the said injury was grievous in nature, whereas the second injury is simple in nature. Therefore, for the second injury, which is simple in nature, Rs.3,000/- is granted.

12. So far as the first injury is concerned, since it was a fracture to left Tibia with callus, certainly, the petitioner would have suffered inconvenience for a quite considerable period and, therefore, keeping in view that he was a daily wage earner being a coolie, a sum of Rs.3,000/- is awarded towards loss of earnings. Towards injury and pain and suffering concerning grievous injury a sum of Rs.25,000/- is awarded and towards transport, extra nourishment and attendant charges a sum of Rs.10,000/- is awarded. Thus, a total compensation of Rs.41,000/- (Rs.3,000/- + Rs.3,000/- + Rs.25,000/- + Rs.10,000/-) is awarded by enhancing the amount of Rs.2,000/- granted by the Tribunal to Rs.41,000/-. However, so far as the rate of interest is concerned, in view of the decision of the Hon'ble Apex Court in **Rajesh**

and others v. Rajbir Singh and others, the rate of interest awarded by the Tribunal at 12% p.a., is reduced to 7.5% p.a., on the entire amount of Rs.41,000/- from the date of petition till realisation.

13. Accordingly, the instant CMA is partly allowed modifying the impugned award passed by the Tribunal, by enhancing the compensation and reducing the rate of interest as stated supra. There shall be no order as to costs.

14. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal shall stand closed.

A. SHANKAR NARAYANA, J

Date: 23.11.2015

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