

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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M.A.C.M.A. No.987 of 2005

JUDGMENT:

Dissatisfied with the amount of Rs.1,34,348/- granted as compensation by the order dated 04.01.2005 in O.P.No.249 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, Nalgonda (for short, 'the Tribunal') as against the claim of Rs.4,50,000/- laid under Section 166 r/w 140 of the Motor Vehicles Act, 1988 (for short, 'the Act'), for the injuries sustained by the petitioner in a road accident, the instant appeal is preferred seeking enhancement of compensation.

2. The appellant herein is the petitioner, while the respondent Nos.1 to 3, who are the insurer, owner and driver of the accident vehicle respectively, were respondents in the original petition.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts in brief are that the petitioner along with his wife was proceeding in their car bearing registration No.AP 9G 9799 on 20.07.2000 at about 4-30 p.m., when they reached Marlabanda vagu, a lorry bearing registration No.ADF 2566 driven in a rash and negligent manner at high speed dashed their car, due to which, they sustained injuries. Even the concerned Station House Officer also registered a case in Crime No.37 of 2000 under Section 338 of I.P.C. against the driver of the lorry. According to the petitioner, he was rushed to Government Headquarters Hospital, from there, he was referred to Hyderabad for better treatment, and he got admitted in Apollo Hospital from 31.07.2000 to 07.08.2000. Dr.A.V.Guruva Reddy, Orthopaedic Surgeon operated his right leg at an expense of Rs.19,000/- and even after discharge from the hospital suffered from permanent disability due to loss of patella on right leg. Hence, sought Rs.4,50,000/- from the respondent Nos.1 to 3, who are the insurer, owner and driver of the lorry respectively.

5. Respondent Nos.2 and 3, who are the owner and driver of the accident vehicle, remained *ex parte*. Respondent No.3-Insurance Company opposed the claim raising

various pleas and finally sought to dismiss the claim petition.

6. Basing on the said pleadings, the Tribunal framed the following point for determination about the responsibility for the accident:

"Whether petitioner is entitled to a compensation of Rs.4,50,000/- from R-1 insurer, R-2 owner and R-3 driver for the rash, negligent and high speed driving of lorry, ADF-2566, on 20-7-2000 driver employed by R-2 and R-1 insurer causing fracture injuries to the petitioner?"

7. During enquiry, the petitioner examined himself as P.W.1 besides examining Dr. A.V.Guruva Reddy as P.W.2 and marked Exs.A.1 to A.8; whereas, on behalf of respondent No.1, no witnesses were examined except marking Ex.B.1 on consent, which is copy of insurance policy, and Ex.D.1 X-ray films was marked by the Court.

8. The Tribunal, on appraisal of evidence on record, both, oral and documentary, let in by the petitioner, held issue No.1 in favour of the petitioner finding rash and negligent driving on the part of the driver of the lorry; and on issue No.2, basing on the evidence of P.W.2-Medical Officer in Apollo Hospital, who issued disability certificate showing disability at 50%, granted Rs.2,000/- each for two simple injuries, Rs.10,000/- each for injury Nos.3 and 4, Rs.89,723/- towards medical expenses under Exs.A.4 and A.5 and Rs.15,000/- towards partial and functional disability at 10%, Rs.5,625/- towards loss of earnings for one month and 15 days, and, thus, granted a total sum of Rs.1,34,348/- as compensation.

9. Not satisfied with the amount of compensation granted by the Tribunal, the petitioner preferred the instant appeal seeking enhancement of compensation contending in the grounds of appeal that the Tribunal did not properly appreciate the evidence on record and the Tribunal ought to have taken partial functional disability as assessed by P.W.2 at 50% instead of 10% and sought to grant balance amount.

10. Heard Sri K.Ranga Rao, learned counsel for the appellant-claimant, and Sri N.Mohan Krishna, learned Standing Counsel for the 1st respondent-Insurance Company. Despite notice being served on the 2nd respondent-owner, none appears for him. Concerning the 3rd respondent-driver, it is shown in the cause title of the grounds of appeal that he is not a necessary party to the instant appeal.

11. The short question that arises for consideration is, whether the amount awarded by the Tribunal requires to be enhanced?

12. Perused the order under challenge and the evidence on record adduced by the petitioner, both, oral and documentary. There is no dispute in regard to taking place of the accident on account of the rash and negligent driving of the driver of the lorry. Even so far as the age of the petitioner is concerned, he was 60 years old on the date of accident, which is not in dispute. Concerning the amount of compensation, Ex.A.8 income tax returns show the annual income of the petitioner as Rs.45,000/-, though, he has not filed other returns for preceding two years. Though, the petitioner has claimed that he was earning Rs.2,00,000/- and even Ex.A.7 was issued by the concerned Mandal Revenue Officer, still, on the ground that none were examined to prove the contents of Ex.A.7, the same was discarded by the Tribunal, which finding cannot be disturbed. The injuries sustained by the petitioner as shown in Ex.A.3 were fracture of fifth and sixth ribs on right side, and comminuted condylar fracture to right tibia bone and the Orthopaedic Surgeon fixed a steel plate to the tibia bone. P.W.2's evidence shows that keeping in view the stiffness of right knee on account of fracture of right upper end of tibia and fibula, who treated P.W.1 in Apollo Hospital from 24.07.2000 to 07.08.2000, has issued disability certificate showing percentage of disability at 50% and the Tribunal has taken 10% functional disability, but however, the same can be taken as 20% functional disability since 50% disability was with reference to the right knee alone of the petitioner who was a practicing lawyer by profession. Hence, the amount of Rs.2,000/- granted for each simple injury is enhanced to Rs.3,000/- each making it to Rs.6,000/- for two simple injuries. The Tribunal has granted Rs.10,000/- each for injury Nos.3 and 4, besides granting Rs.15,000/- towards disability at 10%, but since the disability is taken at 20%, as mentioned in the above, and since Ex.A.8 shows the annual income at Rs.45,000/-, 20% disability works out to Rs.9,000/- towards loss of earning capacity per annum. Since relevant multiplier is '9' for the age group of persons 56 to 60 years, and when applied the same, it works out to Rs.81,000/- ($\text{Rs.9,000/-} \times \text{'9'}$) towards partial and permanent disability sustained by the petitioner, which is granted against Rs.20,000/- and Rs.15,000/- granted by the Tribunal towards injury Nos.3 and 4 and 10% disability, as the multiplier method was not adopted by the Tribunal, though, there has been evidence on record to show the definite income earned by the petitioner. The amount of Rs.89,723/- granted by the Tribunal towards medical expenses is rounded off to Rs.90,000/- and the same is granted. Towards loss of temporary earnings, keeping in view, the income at Rs.3,750/- per month arrived at by the Tribunal and the nature of injuries sustained by the petitioner and since it

would have taken atleast six months to regain normalcy by the petitioner, for six months a sum of Rs.22,500/- is granted. Towards extra nourishment, a sum of Rs.5,000/- is granted and towards transport charges, a sum of Rs.5,000/- is granted and towards attendant charges, a sum of Rs.6,000/- is granted.

13. Thus, the petitioner is entitled to a total sum of Rs.2,15,500/- (Rupees two lakhs fifteen thousand and five hundred) as against Rs.1,34,348/- granted by the Tribunal, towards compensation and the same is accordingly granted, with interest at 7.5% per annum on the entire amount from the date of petition till realisation, as against 8.5% per annum from the date of filing of the petition till date of award and at 5% per annum from the date of award till realisation, granted by the Tribunal, as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**.

14. Accordingly, the instant appeal is allowed in part modifying the order passed by the Tribunal, by enhancing the compensation and reducing the rate of interest, as indicated above, and confirming the same in all other respects. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

18th March, 2015

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