

HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

M.A.C.M.A.No.1010 of 2005

JUDGMENT:

Having got dissatisfied with the award of Rs.24,000/- as compensation by the order dated 26.10.2004 in M.V.O.P.No.8 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal – cum- VII Additional District Judge, Madanapalle, as against the claim of Rs.1,00,000/-, laid under Section 166 of the Motor Vehicles Act, 1988, the petitioner preferred the instant appeal seeking grant of balance amount.

For convenience sake, the parties are hereinafter referred to as they were arrayed before the Tribunal in the O.P.

The facts, in brief, are that on 25.08.1999, the petitioner boarded an RTC bus bearing No.AP10-Z-965 which was proceeding to Madras and, when it reached Palamaner outskirts at about 2.45 a.m, a lorry bearing No.TN23-B-9199, driven in a rash and negligent manner, hit the RTC bus on account of which, the petitioner and other passengers sustained injuries. According to the petitioner, he sustained fracture of his right rib bone No.9. He was taken to Government Hospital, Palamaner and was referred to the Government Hospital at Chittoor. He claims that he spent Rs.3,000/- towards medical expenses. He also states that he has taken treatment under Dr.Sanjeeva Rayudu, Orthopedic Surgeon and, later, under Dr.Naveen of Madanapalle. According to him, he was earning Rs.6,000/-p.m. by doing business and, due to the accident, he was unable to carry on business and do manual work and, therefore, he sought an amount of Rs.1.00 lakh as

compensation from respondent Nos.1 to 3, who are the owner, insurer and the Managing Director of the Andhra Pradesh State Road Transport Corporation respectively.

The first respondent remained ex parte before the Tribunal. Respondent Nos.2 and 3 filed their respective written statements resisting the claim by raising various pleas.

The Tribunal, basing on the said pleadings, framed the following four issues:

- “ 1. Whether the accident occurred due to the rash and negligent driving of the offending vehicles lorry bearing No.TN23 B 9199 and bus bearing No.AP10 Z 969 involved in the accident and whether it resulted in injuries to the petitioner?
2. Whether the petition is bad for non-joinder of necessary parties?
3. Whether the petitioner is entitled for compensation and if so payable by whom and to what extent?
4. To what relief?”

During enquiry, the petitioner, besides examining himself as PW.1, has examined Dr.Sanjeeva Rayudu as PW.2, and marked Exs.A.1 to A.9 to substantiate his claim. On behalf of the respondents, one P.Kullayappa was examined as RW.1. The driver of the RTC bus had marked Ex.B.1, copy of the policy on behalf of the Insurance Company.

As regards issue No.2, the Tribunal, while holding that the claim petition is maintainable as it was properly instituted and, thus, answered the said issue. On issue Nos.1 and 3, the Tribunal, taking into consideration the evidence of RW.1 and PWs.1 and 2, held that due to the rash and negligent driving of the lorry driver, the accident has occurred. On issue No.2, while placing reliance

on the evidence of PW.2, who has even asserted, in his chief-examination, that the petitioner did not sustain any permanent disability considering description of injuries found in Ex.A.2, supported by the evidence of PW.2 and discarding the stand of the petitioner that he sustained permanent disability, granted Rs.15,000/- towards pain and suffering for fracture of 3 ribs, Rs.3,000/- towards medical expenses, Rs.2,000/- towards extra nourishment, Rs.1,000/- towards transportation and Rs.3,000/- towards loss of temporary earnings, making a total of Rs.24,000/- with interest at 9% p.a. thereon.

It is the aforesaid order which is under challenge by the petitioner on the ground that meagre compensation was granted, that the Tribunal has not properly appreciated the evidence, and the consequences of breakage of rib bones has not been taken into consideration in proper perspective and, therefore, sought for balance amount.

Heard Sri S.S.Bhatt, learned counsel for the appellants, and Sri V.Srinivasa Rao, learned counsel for the second respondent – United India Insurance Company Limited.

The instant appeal was dismissed against respondent Nos.1 and 3 for default by orders dated 03.01.2012. Since the Tribunal has also dismissed the claim against the third respondent – Corporation, dismissal of appeal against the third respondent herein is of no consequence. Even the dismissal of appeal against the first respondent is of no consequence since he remained ex parte, in view of the decision of a Division Bench of this Court in *Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma*^[1],

wherein it is held that:

"If the Claims Tribunal records a finding that the accident had taken place due to the rash or negligent driving of the driver of the motor vehicle and if such finding is not challenged either by the Insurance Company or by the owner of the motor vehicle, the question that arises in appeal filed against the orders of the Tribunal by the claimants is only with regard to the determination of just, fair and reasonable quantum of compensation and therefore there cannot be any bar to decide the quantum of compensation against the Insurance Company even in the absence of owner of the vehicle to the extent of the statutory liability of the Insurance Company. But the quantum of compensation cannot be decided over and above the statutory liability of the Insurance Company in the absence of the owners, but the question of the statutory liability of the Insurance Company survives for consideration at the appellate stage."

Perused the order and evidence let in by the petitioner, more particularly, the evidence of PW.1, the wound certificate - Ex.A.2, bunch of medical receipts under Ex.A.5, and bunch of assessment/demand notices (nine in number) marked as Ex.A.9. The finding recorded by the Tribunal, that the petitioner did not sustain any partial permanent disability was since based on appreciation of evidence of PW.2, who has even asserted, in his chief-examination, that there will not be any disability on account of fracture of three ribs, does not warrant interference. However, the amounts granted by the Tribunal under various heads concerned, since there was fracture of three ribs, as described in Ex.A.2, Rs.15,000/- awarded towards the breakage of three ribs appears to be on lower side. Therefore, the same is enhanced to Rs.30,000/-. The amount of Rs.3,000/- awarded towards medical expenses is not disturbed; Rs.2,000/- awarded towards extra

nourishment is enhanced to Rs.5,000/- keeping in view, the sufferance undergone by PW.1, and the amount of Rs.1,000/- granted towards transportation is enhanced to Rs.3,000/-. Concerning loss of temporary earnings, the Tribunal has granted Rs.3,000/- as the petitioner has undergone treatment for six weeks but, however, the breakage of ribs invariably must have caused inconvenience to his regular course of business for atleast three months and, therefore, it is doubled i.e. Rs.6,000/-. Thus, the petitioner is entitled to a total compensation of Rs.47,000/- with interest at 7.5% p.a., as against 9% p.a. granted by the Tribunal throughout, as per the decision of the Supreme Court in Rajesh v. Rajbir Singh^[2].

Thus, the Appeal is partly allowed. No order as to costs.

Miscellaneous petitions pending, if any, shall stand disposed of.

A.SHANKAR NARAYANA,J

Date: 17.03.2015
usd

^[1] 2001(1) ALT 495 (D.B.)

^[2] 2013 ACJ 1403