

HON'BLE SMT JUSTICE ANIS

M.A. C.M.A. No.993 of 2005

J U D G M E N T :

This appeal is filed by the appellant/petitioner under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the Judgment and Decree dated 05.01.2005, passed by the Chairman, Motor Vehicle Accident Claims Tribunal-cum-VII Additional District Judge (FTC), Nizamabad at Bodhan in M.V.O.P.No.616 of 2001, awarding compensation of Rs.30,000/-.

2. The appellant/petitioner filed the above M.V.O.P under Section 166 of the Act, claiming compensation of Rs.1,50,000/- for the injuries sustained by the petitioner in a motor vehicle accident, that occurred on 03.09.2000.

3. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the Original Petition.

4. The brief averments made in the petition are that on 03-09-2000 at 1.30 PM the petitioner and one Asif were travelling in the auto bearing registration No.AP-23-T-7340 from Janakampet to Nizamabad and when the said Auto reached near Sarangapur Godowns, another auto bearing registration No.AP-25-T-8036 coming from Nizamabad side in a rash and negligent manner with high speed dashed their auto and due to the said accident, the petitioner sustained fracture to both his legs and also multiple grievous injuries on head and various parts of the body. Due to the said injuries, the petitioner is not in a position to walk and sit and lift any weight and also developed headache. The petitioner has incurred permanent disability. The petitioner was earning Rs.8,000/- per month and due to permanent disability, he is unable

to attend his regular duties. Therefore, the petitioner prayed the Court to grant compensation.

5. The Respondent No.1 remained ex-parte.

6. The brief averments made in the written statement filed by the 2nd respondent are as follows :

The 2nd respondent put the petitioner to prove the manner of the accident, the age and income of the petitioner and stated that the accident took place due to gross negligence of the driver of the auto bearing No.AP-23-T-7340. Further, it is stated that the accident has not been reported by the owner of the auto in collusion with the petitioner. The

2nd Respondent also stated that the driver of the auto bearing No.AP-23-T-7340 is a necessary party and the petition is not maintainable for non-joinder of necessary party and also the claim is excessive, abnormal and out of all proportions and finally stated that if compensation is awarded, it may be awarded against both the vehicles, since there was contributory negligence.

7. Basing on the above pleadings, the Tribunal framed three issues and to substantiate the claim, the petitioner got examined himself as P.W.1 and got examined another witness as P.W.2 and got marked Exs.A1 to A7 on his behalf.

On behalf of respondent No.2, no oral evidence was adduced, but Ex.B1 – copy of Insurance Policy was marked by consent.

8. After considering the oral and documentary evidence, the Tribunal held that the accident occurred due to rash and negligent driving of the driver of the Auto bearing No.AP-25-T-8036, resulting the injuries to the petitioner and awarded compensation of Rs.30,000/- along with interest at 9% p.a to the petitioner.

9. Being not satisfied with the compensation awarded by the Tribunal, the petitioner preferred the present appeal.

10. The learned counsel appearing for the appellant/ petitioner argued that in the said accident the petitioner suffered fracture injury and the Tribunal has not granted any compensation for pain and suffering, therefore, prayed the Court to enhance the compensation.

11. On the other hand, the learned counsel appearing for the second respondent-Insurance Company argued that the Tribunal after considering the entire evidence granted reasonable compensation for the grievous and simple injuries suffered by the petitioner. Further, the petitioner was in the Government Hospital only about three days, as such, he does not incur any expenditure and the petitioner also not suffered any disability and finally prayed the Court to dismiss the appeal.

12. Having regard to the submissions made by the learned counsel appearing for both parties, the points which are to be decided in this appeal are as follows:

1. Whether the appellant is entitled for enhancement of compensation as prayed for?
2. Whether the compensation awarded by the Tribunal is just and reasonable?

13. **POINTS 1 & 2:** A perusal of the evidence of P.W.1 shows that on 03-09-2000 he was travelling in an auto bearing registration No.AP-23-T-7340 from Janakampet to Nizamabad and when the auto reached near Sarangapur godown, another auto bearing registration No.AP-25-T-8036 came from opposite direction and dashed the auto, due to which, he suffered injuries. To prove this fact, P.W.1 filed Ex.A1 – certified copy of F.I.R., which shows that immediately after the accident, a criminal case was registered in

Crime No.155 of 2000 of Nizamabad Rural Police Station. Ex.A2 is the certified copy of the charge-sheet in C.C. No.1727 of 2000 filed against the driver of the Auto bearing registration No.AP-25-T-8036. Considering the evidence of P.W.1 and Exs.A1 and A2, the Tribunal rightly held that the accident took place due to rash and negligent driving of the driver of the auto bearing registration No.AP-25-T-8036.

14. P.W.1 stated that he received fracture injuries to both his legs and multiple grievous injuries all over the body. He also claims that he suffered disability. According to P.W.1, immediately after the accident, he was shifted to Government Hospital, Nizamabad, where he was treated as inpatient for 15 days. A rod was also inserted and he spent Rs.30,000/- to Rs.40,000/- for treatment. To prove these facts, he examined P.W.2 – Dr.K.Narsing Rao. P.W.2 issued Ex.A4 – Disability Certificate. This Court in Appeal Against Order No.3518 of 2004 dated 09-11-2004 directed not to act solely on the evidence of P.W.2 and one Dr.L.Ramulu while awarding compensation. In the present case, the petitioner produced Ex.A6 – X-ray film and Ex.A7 – Seven Medical Bills issued by Dr.L.Ramulu. As the petitioner suffered one fracture injury to his right leg and two simple injuries, the Tribunal awarded Rs.20,000/- towards pain and suffering, as the petitioner took the treatment in the Government Hospital, Nizamabad. Admittedly, the treatment in the Government Hospital is free of cost. The Tribunal also awarded Rs.5,000/- towards loss of earnings for a period of two months and also granted Rs.5,000/- towards transportation charges and expenses of attendant and also extra-nourishment. The learned counsel for the petitioner rightly conceded about the directions of this Court not to consider the evidence of P.W.2 while awarding compensation.

15. As per the evidence of P.W.1, he sustained one grievous injury and one simple injury, therefore, an amount of Rs.5,000/- is hereby awarded towards injuries suffered by the petitioner. So far as other claim of the petitioner for enhancement of compensation for extra-nourishment and pain and suffering and transportation charges are concerned, the Tribunal already considered the said fact and awarded the just compensation, therefore, the said finding of the Tribunal needs no interference. Thus, the petitioner is entitled for Rs.30,000/- + Rs.5,000/- = Rs.35,000/- and both the respondents are jointly and severally liable to pay the compensation awarded to the petitioner.

16. The learned counsel for the respondents contended that the rate of interest granted by the Tribunal at 9% p.a to the petitioner is high and excessive. Admittedly, the Tribunal has granted the rate of interest to the petitioner at 9% p.a, against the settled principles of law.

17. In ***Sanobanu Nazirbhai Mirza and others v. Ahmedabad Municipal Transport Service***^[1], the Hon'ble Supreme Court awarded interest @ 7.5% p.a. In ***Rebeka Minz and others v. Divisional Manager, United India Limited Insurance Company Limited and another***^[2], the Hon'ble Supreme Court awarded interest at 7% p.a. Thus, in view of the different rate of interests granted by the Apex Court in the judgments cited above, I am of the considered view that the rate of interest awarded by the Tribunal is excessive and therefore, it is a fit case to reduce the rate of interest from 9% to 7.5% p.a. only on the enhanced amount.

18. In the result, the Appeal is allowed in part, enhancing the compensation awarded by the Tribunal to the petitioner from Rs.30,000/- to Rs.35,000/- and on the enhancement amount of

Rs.5,000/-, an interest @ 7.5% p.a. is awarded from the date of appeal till the date of realisation. On deposit of the said amount, the appellant/petitioner is permitted to withdraw the amount. No order as to costs.

19. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

**ANIS,
J.**

Date: 15.07.2015

skmr

[\[1\]](#) 2013 ACJ 2733

[\[2\]](#) 2012 ACJ 2328