

**HONOURABLE SRI JUSTICE A. SHANKAR
NARAYANA**

CIVIL MISCELLANEOUS APPEAL NO. 3332 OF 2005

JUDGMENT:

The instant appeal is preferred seeking enhancement of compensation having dissatisfied with the award of Rs. 41,000/- with 9% interest thereon as against the claim for Rs. 2,00,000/- by the order dated 9.02.2005 in O.P.No. 190 of 2005 on the file of Chairman-Motor Accidents Claims Tribunal-cum- III Additional District Judge, Warangal.

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

3. The facts leading to preferring the instant appeal are on 14.05.2000 at about 8.45 AM, the petitioner, who was then working as Head Constable, RPF, Secunderabad, placed at Kazipet was proceeding on his Bajaj 4S Motor Cycle bearing No. AP 36 F 8788 from Bapujinagar Masjid, Kazipet to Diesel Shed and when he reached in front of Bapujinagar Masjid and proceeding on extreme left side of the road, one jeep bearing registration No. CKW 6958 driven in high speed in a rash and negligent manner by its driver dashed his motorcycle, due to which, he sustained

injuries to his person and got treated for the grievous injuries.

4. The first respondent is the owner of the vehicle and he remained ex-parte before the Tribunal. The second respondent filed counter resisting the claim besides contending that the claim is highly excessive and sought dismissal of the claim.

5. Basing on the said pleadings, the tribunal framed three issues about the responsibility for the accident. During the enquiry, the petitioner examined himself as PW-1 and marked Exs. A1 to A8 and on behalf of the respondent-Insurance Company none is examined and no documents were marked.

6. The Tribunal basing on the evidence of PW-1 and supported by Ex. A1, copy of FIR, and Ex. A4, copy of charge sheet in Crime No. 59 of 2000 of Kazipet Police Station showing that the driver of the jeep was made as an accused in the criminal case held Issue No. 1 in favour of the petitioner. On issue No. 2, basing on the description of injuries that are shown in Exs. A2 and A3, where first and second injuries were described as simple, third injury fractures on lower 1/3rd of fibula and right medial malleolus as grievous, granted Rs. 30,000/- towards injuries, Rs. 1,000/- towards transport charges, Rs. 5,000/-towards pain and suffering and Rs. 5,000/- towards simple injuries 1 & 2, thus, a total sum of Rs. 41,000/- with interest at 9% per annum was awarded. The

petitioner aggrieved by the said order on the ground that meagre compensation was awarded, preferred the instant appeal.

7. It is stated in the grounds of appeal that the Tribunal did not appreciate the evidence on record in proper perspective and though, he spent huge amounts towards medical bills towards treatment for the period from 17.5.2000 to 15.6.2000 and though he is entitled to salary for the period as he has not performed his duties, still, the Tribunal declined to grant amount and, therefore, sought to grant balance amount.

8. Heard Sri J.M. Naidu, learned counsel for the petitioner/claimant. It is represented that notice on first respondent returned unserved. However, his absence would not make any difference in view of the fact that the first respondent remained ex-parte before the Tribunal. No representation for the second respondent.

9. Perused the judgment and decree and the evidence let in by the petitioner himself as PW-1 and Exs. A-1 to A-8. Admittedly, the petitioner has not chosen to examine the Doctor on his behalf despite making various claims towards medical expenses. However, the fact that the petitioner sustained abrasion 3x3 cm in the left zygomatic region, which is simple in nature and multiple small abrasions measuring 1x1 cm on both hands which were also simple in nature and the fractures on right leg 1/3rd of fibula and right medial malleolus grievous in nature,

reflected from Ex. A-3 cannot be disputed since the fracture suffered by the claimant is supported by Ex. A2, X-ray report. The petitioner was treated in M.G.M Hospital, Warangal on 14.5.2000. Ex. A6 medical prescription dated 17.7.200 shows that he was treated in Veena Medicare Skin and Orthopaedic Surgical Hospital for the period from 17.5.2000 to 15.6.2000. The Tribunal has not taken into consideration Ex. A-7 medical bills on the ground that they were not supported by any prescriptions but one Dr. Pattabhi Ramaih, MBBS, D (Ortho) prescribed those medicines under Ex. A7. The fact that remains, is that the petitioner sustained grievous injuries. Therefore, keeping in view, the sufferance he has undergone for the grievous injuries as against Rs. 30,000/- granted by the Tribunal a sum of Rs. **40,000/-** is granted towards grievous injury, towards Simples injuries Rs. **6,000/-** is granted as against Rs. 5,000/- granted by the Tribunal and Rs. **5,000/-** granted by the Tribunal towards pain and suffering is maintained. The Tribunal has not granted any amount towards extra nourishment towards which a sum of Rs. **5,000/-** is granted and towards transport charges the Tribunal granted Rs. 1,000/- the same is enhanced to Rs. **3,000/-**.

10. The learned counsel for the appellant contends that the petitioner had been on leave for about 207 days because of the injuries he sustained in the accident lest, he would not have gone on leave and, therefore, he is

entitled to salary for the leave period but however, there is no documentary proof filed before the Tribunal.

11. The petitioner as PW-1 in his chief examination stated before the Tribunal that he was on leave for three months and he was drawing Rs. 7,500/- per month even according to him as Head Constable of Railway Protection Force. Therefore, the petitioner is entitled to Rs. **22,500/-** ($7,500 \times 3 = 22,500$). Thus, the total amount works out to Rs. **81,500/-** ($40,000 + 6,000 + 5,000 + 3,000 + 5,000/- + 22,500/- = 81,500/-$) (Rupees Eighty One Thousand Five Hundred Only) as against Rs. 41,000/- awarded by the Tribunal and the same is accordingly awarded. The petitioner is entitled to interest on Rs. 81,500/- at 7.5% per annum, from the date of petition till realisation, as per the decision of the Apex Court in **Rajesh and others v. Rajbir Singh and others**^[1]

12. Accordingly, the Civil Miscellaneous Appeal is allowed in part modifying the impugned award passed by the Tribunal, by enhancing the compensation as stated supra. There shall be no order as to costs.

13. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal stand disposed of.

A. SHANKAR
NARAYANA, J

DATE: 13.02.2015.
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[\[1\]](#) 2013 ACJ 1403 = 2013 (4) ALT 35