

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

MACMA No. 1248 of 2005

Judgment:

Having not satisfied with the award of Rs.18,000/- granted by the Tribunal as compensation for the injuries sustained by the petitioner, by the order, dated 18.03.2005, in OP No. 460 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, Adilabad, as against the claim of Rs.2,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), the instant appeal is preferred by the petitioner seeking enhancement.

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 07.10.2001 at about 4.45 PM, while the petitioner along with others was proceeding in a Jeep bearing registration No.AP 1C 4331 from Nirmal to Khanapur and, when it reached the outskirts of Iqbalpur village, since the driver of the Jeep driven it in a rash and negligent manner at high speed and he was unable to control the Jeep, allowed it to dash a tree, due to which the petitioner claims that he sustained fracture to his skull bone and received injuries to other parts of his person. He was shifted to Government Hospital, Khanapur, initially and from there he was shifted to Gandhi Hospital, Secunderabad, and he was discharged on 07.10.2001 and he spent Rs.25,000/- towards medical expenses. Hence, he claimed Rs.2,00,000/- as compensation under Section 166 of the Act from the respondents 1 and 2 who are the owner and insurer of the Jeep respectively.

4. Before the Tribunal, the first respondent – owner of the vehicle remained *ex parte*. The second respondent – Insurance Company opposed the claim by raising various pleas. One of the specific pleas was that the Jeep was overloaded with 20 passengers, which was more than its capacity and, thus, complaining violation of permit as well as policy conditions, sought to exonerate it by dismissing the claim petition against it.

5. The Tribunal, based on the said pleadings, framed three issues in order to fix the responsibility for the accident.

6. During enquiry, the petitioner alone examined himself as PW.1 and marked Exs.A1 to A6 to substantiate his claim. On behalf of the second respondent – Insurance Company, no witnesses were examined and no documents were filed.

7. The Tribunal, basing on the evidence of PW.1 and contents of Exs.A1 and A3, which are copies of FIR and Motor Vehicle Inspector's report, held issue No.1 in favour of the petitioner. On issue No.2, on the basis of description of injuries shown in Ex.A2 – injury certificate and on the ground that the petitioner has not chosen to examine the medical officer, who issued Ex.A6 disability certificate, excluding Ex.A6 granted a total sum of Rs.18,000/- for the grievous injury and two simple injuries with interest at 9% p.a., thereon from the date of petition till realisation.

8. It is the aforesaid order which is under challenge in the instant appeal on the ground that meagre compensation is awarded, despite the fact that the petitioner sustained partial permanent disability as per Ex.A6 and, therefore, sought to grant balance amount.

9. Heard Sri S. Surender Reddy, learned counsel for the appellant. Despite service of notice on the respondents 1 and 2, none appears for them.

10. Perused the order and the evidence on record both, oral and documentary, let in by the petitioner. So far as Ex.A6 – disability certificate is concerned, admittedly, the medical officer, who issued it, was not examined and, therefore, the finding recorded by the Tribunal excluding Ex.A6 and disbelieving the partial permanent disability put forth by the petitioner cannot be faulted.

11. However, concerning the injuries, Ex.A2 – injury certificate clearly shows that the petitioner sustained laceration which was described as grievous injury that being 2 x 2 Cms below the chin and specialist report would show that the petitioner sustained fracture of Maxilla. Basing on it, the petitioner claims that he is unable to eat hard substances and, thus, the disability was permanent in nature. But, without there being any medical evidence to prove Ex.A6 – disability certificate, mere assertions of the petitioner cannot be recorded to arrive at a conclusion that he sustained permanent disability. Since the petitioner sustained one grievous injury, which is fracture of Maxilla, a sum of Rs.15,000/- towards the injury, Rs.10,000/- towards pain and suffering and Rs.5,000/- towards extra nourishment are granted and, towards temporary loss of earnings, taking into consideration that at least for a period of three months the petitioner would not have continued his meat business, a sum of Rs.6,000/- is granted at the rate of Rs.2,000/- per month as his monthly maintenance. Thus, the petitioner is totally entitled to Rs.36,000/- (Rs.15,000/- + Rs.10,000/- + Rs.5,000/- + Rs.6,000/-). The interest at

9% p.a., granted by the Tribunal is maintained on the amount of Rs.18,000/- granted by it, but the interest on the enhanced amount is awarded at 7.5% p.a., as per the decision of the Hon'ble Apex Court in

Rajesh and others v. Rajbir Singh and others^[1].

12. Accordingly, the instant MACMA is partly allowed. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

Date: 10.12.2015
Nsr

^[1] 2013 ACJ 1403 = 2013(4) ALT 35