

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No. 853 of 2005

JUDGMENT:

The instant appeal is preferred dissatisfied with the award of Rs.20,000/- by order dated 16.11.2004 in O.P. No.51 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Nalgonda (for short 'the Tribunal'), as against the claim laid for Rs.1,50,000/- by the petitioner under Section 166 read with Section 140 of the Motor Vehicles Act, 1988. In fact, the petitioner was a minor on the date of filing claim petition. Therefore, he was represented through his mother.

2. In the Original Petition before the Tribunal, the appellant herein is the petitioner, while respondent Nos.1 and 2, who are owner and insurance company respectively of the lorry bearing registration No.AP 24T 789 are the respondent Nos.1 and 2.

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

4. The facts, in brief, are that on 26.10.2000, while the petitioner was proceeding from his village, Shakhapuram to see a movie at Nidmanoor village, near the theatre the driver of the lorry bearing registration No.AP 24T 789 coming from Miryalaguda side drove the vehicle at high speed in a rash and negligent manner dashed the petitioner, due to which the petitioner received injuries to his left and right hands and on his entire face and he lost vision of his right eye. He was shifted to Government Headquarters Hospital, Nalgonda and from there he was shifted to Sarojinidevi Eye Hospital, Hyderabad for expert treatment. The petitioner claims that he was studying fourth class and was unable to move from the bed after the accident and his bright future and education career has been affected, and, therefore, sought to grant compensation of Rs.1,50,000/- from respondents 1 and 2, who are the owner and insurer of the lorry respectively.

5. Respondent No.1 remained *ex parte* before the Tribunal. Respondent No.2 opposed the claim.

6. Basing on the pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry before the Tribunal, the mother and guardian of the injured, besides examining herself as P.W.1, also examined Kommagoni Venkatesham as P.W.2, Dr. K.Janardhan Reddy, Eye Specialist, as P.W.3, and got marked exhibits A.1 to A.7. On behalf of respondent No.2- insurance company, none were examined and no documents were marked.

7. The Tribunal, on appraisal of evidence let in by the petitioner, held issue No.1 in favour of the petitioner. On issue No.2, while appreciating the evidence of P.W.1 in the light of the documentary evidence, found certain omissions on the part of P.W.2, and the treatment undergone by the petitioner under P.W.3, somehow, arrived at a conclusion doubting the genuineness of exhibit A.5 and the evidence of P.W.3. The Tribunal, however, granted Rs.20,000/- only towards compensation for the injuries sustained by the petitioner on the ground that the petitioner failed to prove that he suffered permanent disability to his right eye.

8. Aggrieved of the said order, the instant appeal is preferred, contending in the grounds of appeal that the Tribunal did not properly appreciate the evidence on record and it ought to have taken the disability spoken to by P.W.3 regarding loss of vision as 100%, and, therefore, sought to grant the balance amount.

9. Heard Sri A.Vishnu Vardhan Reddy, learned counsel for the appellant, and Sri M.Sobha Krishna, learned counsel for respondent No.2/Standing Counsel for insurance company. Though notice was served on respondent No.1, none appears.

10. The learned counsel for appellant submits that the Tribunal was not right in granting a meager compensation when there is complete loss of vision of right eye of the petitioner. According to him, the petitioner has taken treatment in Sarojini Devi Eye Hospital, Hyderabad and thereafter, got treated under P.W.3 and the finding of the Tribunal suspecting the genuineness of exhibit A.5 and the evidence of P.W.3, merely because P.W.2 has not spoken to about the treatment undergone by the petitioner under P.W.3, who is an Eye Specialist, particularly, when there is documentary evidence under exhibits A.3, A.4 and A.5 besides the oral evidence of P.W.3 in that regard is unsustainable.

11. On the other hand, it is contended by the learned counsel for respondent No.2 that Ex.A.3 issued by the Civil Assistant Surgeon, Government Hospital, Miryalaguda indicates that the injuries sustained by the petitioner were simple in nature, and, therefore, the observations made by the Tribunal cannot be over-turned and the compensation granted by the Tribunal is just and adequate and hence, supports the order passed by the Tribunal granting Rs.20,000/- to the petitioner.

12. Perused the order under challenge and the evidence, both oral and documentary, let in by the petitioner. The observations in paragraph No.3 of the impugned order, touching the evidence of P.W.3 and documentary evidence under exhibits A.4 and A.5 appear to be on a wrong assumption that P.W.2 did not speak about the treatment undergone by the petitioner under P.W.3. The so-called discrepancies under exhibit A.5 are without any proper reasoning and not supported by plausible reasons and it appears that the Tribunal was carried away by the record under exhibit A.4 rather than carefully examining the entries in exhibit A.4. A perusal of exhibit A.4 would show that the petitioner was admitted in Sarojini Devi Eye Hospital on 30.10.2000 and was discharged on 09.11.2000. All the four slips would reveal about the injuries sustained by the petitioner and the observations made by the doctors, who treated him in Sarojini Devi Eye Hospital, more particularly, the contents would read thus:

“H/o injury while cross the road when lorry hit him on 27/10/2k.

H/o injury to right forearm and left leg ankle injury

H/o loss of consciousness after injury

H/o left vision immediately after injury

Left leg laceration sutured and heated.

Left leg treated lacerated wound seen

Antseg conj – N

Lance: clear

Ac: N

Pupil: dilated

Lens: subluxaha”

13. A perusal of exhibit A.4, thus, clearly reveals that there was “choroidal rupture + inferior to disc retina pale pigment dispersed”, which would definitely

indicate that there was loss of vision and the petitioner was discharged from Sarojini Devi Eye Hospital and was taken to Miryalaguda where he was treated under P.W.3, which cannot be suspected. The petitioner was 10 years old on the date of accident and he has to suffer throughout his life with loss of vision of one eye. Therefore, he cannot be deprived of the amount of Rs.1,50,000/- sought for by him as compensation. Hence, the compensation of Rs.20,000/-, granted by the Tribunal, is enhanced to Rs.1,50,000/- with interest at 7.5% per annum by reducing the rate of interest from 9% per annum, granted by the Tribunal, as per the decision of Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others.**

14. In the result, the appeal is allowed, and the award and decree dated 16-11-2004 passed by the Tribunal in O.P. No.51 of 2001 is modified, enhancing the compensation from Rs.20,000/- to Rs.1,50,000/- (Rupees one lakh and fifty thousand only), with interest at the rate of 7.5% per annum from the date of petition till realization. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

Date: **03.03.2015**

MVA

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Dt. 03.03.2015

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