

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

-

M.A.C.M.A. No.967 of 2005

JUDGMENT:

Dissatisfied with the amount of Rs.1,05,000/- granted as compensation by the order dated 31.01.2004 in O.P.No.296 of 2000 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Nalgonda (for short, 'the Tribunal') as against the claim of Rs.3,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), for the injuries sustained by the petitioner in a road accident, the instant appeal is preferred seeking enhancement of compensation.

2. The appellant herein is the petitioner, while the respondent Nos.1 and 2, who are the owner and insurer of the accident vehicle respectively, were respondents in the original petition.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts in brief are that on 18.09.1999, the petitioner was travelling as a pillion rider on the Hero Honda Motorcycle bearing registration No.AP 24 6883 driven by his friend and at about 10-00 a.m., when they reached near Mahatma Gandhi Statue, Sagar Road, Miryalaguda, a private bus bearing registration No.TN 37 9132 coming in opposite direction driven in a rash and negligent at high speed dashed their motorcycle, due to which, he fell down and sustained grievous injuries. He claims that he sustained fractures of right zygoma and maxilla, fracture on the face and fracture and dislocation on right jaw and his vision was also affected and he was treated in Nizam's Institute of Medical Sciences at Hyderabad, surgery was done on 24.09.1999 and there was second surgical intervention on 02.10.1999. He states he was also treated in L.V.Prasad Hospital from 30.11.1999 onwards, and, hence, sought to grant compensation from respondent Nos.1 and 2, who are the owner and insurer of the accident vehicle respectively.

5. Respondent No.1-owner of the accident vehicle remained *ex parte*. Respondent No.2-Insurance Company filed counter opposing the claim.

6. Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry, the petitioner examined himself as P.W.1 besides examining Dr. D.Mukunda Reddy as P.W.2 and marked Exs.A.1 to A.9 and Ex.X.1 case sheet by summoning the same and marking it through P.W.2; whereas, on behalf of respondent No.2, no witnesses were examined and no documents were marked.

7. The Tribunal, on appraisal of evidence, both, oral and documentary, let in by the petitioner, held issue No.1 in favour of the petitioner finding rash and negligent driving on the part of the driver of the bus; and on issue No.2, taking into consideration the evidence of P.Ws.1 and 2 and the contents of Ex.X.1 case sheet and also basing on the admission made by P.W.2 in his cross-examination that the fractures sustained by the petitioner were perfectly healed and keeping in view, the nature of injuries sustained by the petitioner and the sufferance he has undergone, granted Rs.50,000/- for multiple fractures on zygoma and maxilla, Rs.20,000/- towards medical expenses, Rs.5,000/- towards pain and suffering, Rs.5,000/- towards transport charges, Rs.15,000/- towards loss of earnings and Rs.10,000/- towards disability/disfiguration of face, and, thus, granted a total sum of Rs.1,05,000/- with interest at 9% per annum from the date of petition till realisation.

8. Not satisfied with the amount of compensation granted by the Tribunal, the petitioner preferred the instant appeal seeking enhancement contending in the grounds of appeal that the Tribunal has not taken into consideration the earnings of the petitioner and taking Rs.2,500/- towards loss of earnings per month was very meager, and, though, there was no rebuttal evidence, still, granting Rs.1,05,000/- as against the claim of Rs.3,00,000/- laid by the petitioners reflects lack of appreciation of evidence in proper perspective, and, therefore, sought to grant balance amount.

9. Heard Sri B.Papa Rao, learned counsel for the appellant-claimant, and Sri Vutla Srinivasa Rao, learned Standing Counsel for the 2nd respondent-Insurance Company. The appeal was dismissed for default against the 1st respondent-owner of the vehicle by the orders dated 03.01.2012. Since the 1st respondent remained *ex parte* before the Tribunal, the dismissal of appeal against him is of no consequence in view of the decision of a Division Bench of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others**, 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."

10. The short question that arises for consideration in the instant appeal is, whether the amount awarded by the Tribunal requires to be enhanced?

11. Perused the order under challenge and the evidence on record adduced by the petitioner, both, oral and documentary. The nature of injuries sustained by the petitioner is reflected from Ex.X.1 case sheet summoned from the NIMS Hospital. As per the entries in Ex.X.1, the petitioner has undergone surgical intervention on 24.09.1999 on right eyebrow and zygoma bone and lower eye bone, i.e., maxilla, and even the petitioner sustained fracture on mandible. Ex.A.5 is the discharge record showing that the petitioner was admitted in NIMS Hospital on 19.09.1998 and surgical interventions were held on 24.09.1998 and 04.10.1999. Ex.A.5 reflects that there was bleeding from right nostril and pain in abdomen and there was a pelvic injury. Thus, Ex.A.5 reflects that two fractures of right zygoma and right maxilla and injuries on pelvic, abdomen and chest. The admission made by P.W.2 in his cross-examination was to the effect that the fractures sustained by P.W.1 were healed perfectly. Thus, there was no scope for partial permanent disability being occasioned in view of the said admission of P.W.2 in his cross-examination.

12. Now turning to the amounts granted by the Tribunal under various heads, the Tribunal has granted Rs.50,000/- towards multiple fractures of right zygoma and right maxilla and also granted Rs.5,000/- separately towards pain and suffering. Keeping in view, the fact that the petitioner has undergone surgical interventions on 24.09.1999 and 04.10.1999 and the nature of injuries he has sustained for the injuries as such, the amount of Rs.50,000/- awarded by the Tribunal is enhanced to Rs.75,000/-. The Tribunal granted Rs.20,000/- towards medical expenses. The Tribunal, however, did not take into consideration the medical bills relating to the

hospitals other than the bills relating to NIMS Hospital. The same cannot be found fault for the reason that no doctor or any other person was examined to prove the contents of the said medical bills. The Tribunal has granted Rs.5,000/- towards transport charges since the petitioner had to visit the hospital for about six months to take follow up treatment. When kept in view the profession of the petitioner, the amount of Rs.5,000/- was on lower side, and, therefore, the same is enhanced to Rs.20,000/- under the head 'transport charges'. The Tribunal has granted Rs.15,000/- towards loss of earnings during treatment taking into consideration the monthly earnings of Rs.2,500/-. It is no doubt true, no documentary evidence is forthcoming to prove that the petitioner was earning Rs.20,000/- per month. But however, it can be construed that the petitioner must be earning Rs.5,000/- per month and for six months a sum of Rs.30,000/- is granted as against Rs.15,000/- granted by the Tribunal towards loss of earnings. The Tribunal has granted further sum of Rs.10,000/- towards disability on the face, which accounts for disfiguration but not disability as such. Since the petitioner was 35 years old on the date of accident and he has to suffer with the disfiguration, it would be reasonable to award Rs.25,000/- as against Rs.10,000/- granted by the Tribunal and accordingly granted the same.

13. Thus, the petitioner is entitled to a total sum of Rs.1,75,000/- (Rupees one lakh and seventy five thousand) as against Rs.1,05,000/- granted by the Tribunal, towards compensation and the same is accordingly granted, with interest at 7.5% per annum on the entire amount from the date of petition till realisation, as against 9% granted by the Tribunal, as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**.

14. Accordingly, the instant appeal is allowed in part modifying the order passed by the Tribunal, by enhancing the compensation and reducing the rate of interest, as indicated above, and confirming the same in all other respects. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

18th March, 2015

siva