

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.899 OF 2005

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JUDGMENT:

Dissatisfied with the award of Rs.70,000/- (Rupees seventy thousand only) granted as compensation for the injuries sustained by the petitioner as against the claim for Rs.1,50,000/- (Rupees one lakh and fifty thousand only) laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), by order and decree, dated 18-01-2005, in O.P. No.684 of 2003, passed by the learned Chairman, Motor Accidents Claims Tribunal – cum – I Additional District Judge, Vizianagaram (for short 'the Tribunal'), the instant appeal is preferred by the appellant represented by his father and natural guardian under Section 173 of the Act.

2. The appellant herein is petitioner in the O.P. before the Tribunal, while respondent Nos.1 and 2, who are owner and insurer of auto-rickshaw bearing registration No.AP 35T 5943, are respondent Nos.1 and 2, respectively.

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

4. The facts, in brief, are that on 02-12-2002, the petitioner boarded auto-rickshaw bearing registration No.AP 35T 5943 at

A.T. Agraharam to go to Vizianagaram and when it reached near Chakali Perantalu Temple, Dannanapeta at about 8.00 P.M., since the driver of auto-rickshaw drove it in a rash and negligent manner, it turned upside down, resulting injuries to the petitioner. He was shifted to Government Hospital, Vizianagaram for treatment. The petitioner claims that he was treated as in-patient from 02-12-2002 to 06-05-2003 and, therefore, sought to grant a sum of Rs.1,50,000/- as compensation against the respondents being owner

and insurer of the auto-rickshaw.

5. Respondent No.1, owner of the vehicle, filed memo adopting the counter filed by the 2nd respondent – Insurance Company.

6. Respondent No.2 filed counter opposing the claim.

7. The Tribunal framed three issues basing on the above pleadings. During inquiry, on behalf of the petitioner, he examined himself as PW.1, besides examining Dr.K.V. Murali Mohan as PW.2 and marked Exs.A-1 to A-7 and also got marked Exs.X-1 and X-2. On behalf of the contesting respondent, none was examined, but, however, copy of insurance policy was marked as Ex.B-1.

8. The Tribunal, on appraisal of evidence, both oral and documentary, held issue No.1 in favour of the petitioner. On issue No.2, taking into consideration the contents of Ex.A-2 – copy of wound certificate and Ex.X-1 – case sheet maintained at Government Hospital, Vizianagaram showing that the petitioner was treated for more than five (05) months as in-patient and the 20% partial permanent disability spoken to by PW.2 as per Ex.A-7 disability certificate issued by him and being student of 10th class, had to give a break for his academic education, granted Rs.40,000/- towards disability placing reliance on the decision of the Hon'ble Supreme Court in **Kapil Kumar v. Kudrat Ali and others**, besides granting Rs.15,000/- towards pain and suffering; and Rs.15,000/- towards medical expenses, transportation and extra nourishment and, thus, a total sum of Rs.70,000/- was granted by the Tribunal with interest at 9% per annum.

9. It is the aforementioned order which is challenged in the instant appeal seeking enhancement contending in the grounds of appeal that the Tribunal ought to have accepted the expenditure of Rs.30,000/- towards medicines

instead of Rs.15,000/- including extra nourishment, and ought to have awarded the entire amount shown under the head of 'compensation for loss of future earnings and permanent disability'.

10. Heard Mrs. Shanthi Neelam, learned counsel for the appellant - petitioner, and Sri P.L. Rao, learned counsel for the 1st respondent. Though, notice was effected on respondent No.2 – Insurance Company, none represented the Company.

11. As seen from the evidence on record as well as the findings recorded by the Tribunal, the Tribunal despite accepting 20% partial permanent disability and accepting Ex.A-7 – disability certificate and the evidence of PW.2 and placing reliance on the decision of the Hon'ble Supreme Court in **Kapil Kumar's Case** (Supra 1), granted Rs.40,000/- which, certainly, requires hike, since in the decision of the Hon'ble Supreme Court, the boy was aged nine (09) years, though, permanent disability was to the extent of 20% as the one occurring in the instant case also, however, keeping in view, that the petitioner was 10th class student and had to give up his academic education for the relevant year, it would be reasonable to grant Rs.50,000/- as against the amount of Rs.40,000/- granted by the Tribunal. The Tribunal has granted Rs.15,000/- towards pain and suffering. When kept in view the nature of injury sustained and the sufferance he had undergone, since he was treated as in-patient for more than five (05) months i.e., from 02-12-2002 to 06-05-2003, it is desirable to grant Rs.20,000/- as against the amount of Rs.15,000/- granted by the Tribunal. Towards attendant charges and medical expenses including extra nourishment, the Tribunal has granted Rs.15,000/-, which appears to be on lower side, since the medical bills under Ex.A-4 would show a sum of Rs.7,559.86ps. was spent. Therefore, in addition to Rs.15,000/-, a sum of Rs.10,000/- is granted, making it to Rs.25,000/- to which, the petitioner is certainly entitled. Thus, in all, the petitioner is entitled to a sum of Rs.95,000/- (Rupees ninety five thousand only) as compensation as against the amount of Rs.70,000/- awarded by the Tribunal. Concerning the interest at 9% per annum awarded by the Tribunal, the same is reduced to 7.5% per annum on

Rs.95,000/- from the date of petition till the date of realization as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others.**

12. In the result, the appeal is allowed in part, and the order and decree, dated 18-01-2005, in O.P. No.684 of 2003, passed by the Tribunal are modified, enhancing the compensation to Rs.95,000/- (Rupees ninety five thousand only) from Rs.70,000/-with interest at the rate of 7.5% from the date of petition till realization. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

February 12, 2015.

Mgr