

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No. 1178 OF 2005

-

-

JUDGMENT:

Not satisfied with the award of Rs.33,000/- as against the claim of Rs.2,60,000/- laid under Section 166 of the Motor Vehicles Act, by the order dated 12.01.2005, in M.V.O.P.No.182 of 1999, on the file of the Chairman, Motor Accidents Claims Tribunal-cum-IV Additional District Judge, East Godavari District, Kakinada, the instant appeal is preferred by the petitioner seeking enhancement of compensation.

2. The appellant herein is the petitioner, while respondent Nos.1, 2 and 3, who are the driver, owner and insurer of the accident vehicle respectively, were respondent Nos.1, 2 and 3 in the original petition.

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

4. The facts in brief are that the petitioner, who is 34 years of age, working as typist in Rural M.R.O. Office, Kakinada, drawing a salary of Rs.5,000/- per month, was returning on his scooter at Nagamallithota junction on 20.02.1999, at about 09.30 p.m., during which time the first respondent drove Kinetic Pride in rash and negligent manner, came from behind and dashed the scooter resulting grievous injuries to the petitioner, who has undergone treatment and accordingly incurred huge expenses and, therefore, he sought Rs.2,60,000/- as compensation from the driver, owner and insurer of the Kinetic Pride, making them as R1, R2 and R3 respectively. The first and second respondents filed counter opposing the claim while mentioning that the first respondent had nothing to do with the accident, the petitioner himself fell from his scooter and

sustained injuries. The third respondent filed separate counter opposing the claim.

5. The Tribunal framed three issues in order to fix responsibility for the accident. During enquiry, the petitioner examined himself as PW1, Dr.B.Rangarao and Dr.K.Babji were examined as PWs.2 and 3 respectively, and marked Exs.A1 to A9 besides X1 got marked through PW2. On behalf of the third respondent, no witnesses were examined, but the copy of Insurance policy was marked as Ex.B1.

6. On point No.1, the Tribunal accepting the evidence of PW1 supported by Exs.A1 and A4, which are certified copies of First Information Report and charge sheet showing the first respondent as accused held it in favour of the petitioner.

7. On point No.2, as against the claim of Rs.2,60,000/- made by the petitioner towards compensation, discussing elaborately the contentions, granted Rs.5,000/- towards grievous injury mentioned in Ex.A2 and Rs.3,000/- towards simple injury, Rs.10,000/- towards loss of two months income, Rs.5,000/- towards pain and suffering and mental agony, Rs.10,000/- towards medical expenses. Thus, a total amount of is Rs.33,000/- was granted with interest @ 9% per annum making respondent Nos.1 to 3 jointly and severally liable to pay the compensation.

8. Not satisfied with the amount awarded, the petitioner preferred the instant appeal contending in the grounds that the Tribunal has not properly appreciated the evidence on record, more particularly, the contents of Ex.A3 and the evidence of medical officer examined as PWs.2 and 3 and, therefore, sought for grant of balance amount.

9. Heard Sri N.Siva Reddy, learned counsel for the appellant and Sri Srinivasa Rao Vutla, learned Standing Counsel for respondent No.3 Insurance Company. 2nd respondent, though, served with notice, none appears for it. It is recorded that Batta is due so far as the first respondent is concerned, who is the driver of the vehicle. In so far as the first respondent is concerned, the instant appeal is dismissed for default on 03.01.2012. However, the same would not make any difference in adjudicating upon the controversy in the instant appeal, as

respondent Nos.1 and 2 have already suffered decree passed by the Tribunal.

10. To find out whether the petitioner is entitled for enhancement of compensation or not, Ex.A2 and evidence of PWs.2 and 3 are material. Ex.A2 shows the following injuries:

- “ (i) Lacerated injury on the middle of the lateral border of the dorsum of the right forearm measuring about 1 cm x 1 cm bone deep. Surroundings swollen and tender.
- (ii) Lacerated injury above the left medial malleolus about 4 cm x ½ cm skin deep.
- (iii) Swelling and tenderness on the right thigh noted. X-Ray 2232/MCC 435 right forearm appliance # radius and ulna.”

11. Thus, the first injury shows that there was fracture on right forearm. Therefore, the amount of Rs.5,000/- granted by the Tribunal towards grievous injury is enhanced to Rs.25,000/- as there has been fracture of both bones of right forearm, more particularly, keeping in view that the petitioner was an employee as typist in Rural M.R.O. office. Concerning two simple injuries the Tribunal granted Rs.1,500/- each, which is enhanced to Rs.6,000/-. Admittedly, no permanent disability is forthcoming in the instant case. In such an event, the other amounts granted by the Tribunal towards loss of two months income at Rs.10,000/-, Rs.5,000/- towards pain and suffering and mental agony, Rs.10,000/- towards medical expenses are maintained. Towards transport charges, nothing was awarded. Therefore, a sum of Rs.2,000/- is awarded towards transport charges.

12. Thus, the petitioner is totally entitled to Rs.58,000/- as against Rs.33,000/- granted by the Tribunal, however, with interest @7.5% per annum from the date of petition till realisation, as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**, as against 9% per annum awarded by the Tribunal.

13. Accordingly, the appeal is allowed in part. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

DATE: 27.03.2015.

vhb