

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.953 OF 2005

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JUDGMENT:

Dissatisfied with the award of Rs.14,160/- (Rupees fourteen thousand one hundred and sixty only) granted by the learned Chairman, Motor Accidents Claims Tribunal – cum – III Additional District Judge (Fast Track Court), Asifabad (for short 'the Tribunal') as compensation for the injuries sustained by the petitioner, by order and decree, dated 07-02-2005, in O.P. No.193 of 2002, as against the claim for Rs.1,50,000/- (Rupees one lakh and fifty thousand only) laid under Sections 163 (I)(a) and 166 of the Motor Vehicles Act, 1988 (for short 'the Act') and Rule 455 of the Andhra Pradesh Motor Vehicles Rules, 1989, the instant appeal is preferred under Section 173 of the Act.

2. The appellant herein is the petitioner in the O.P. before the Tribunal, while respondent Nos.1 and 2, who are owner and insurer of Jeep bearing registration No.AP 1A 7575, are respondent Nos.1 and 2, respectively; and respondent Nos.3 and 4, who are owner and insurer of lorry bearing registration No.AP 25T 3339, are respondent Nos.3 and 4, 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 17-09-2000 at 7.30 A.M., the petitioner was proceeding in a Jeep bearing registration No. AP 1A 7575 from CCC Corner to Buruguda village, and when it reached near Rebbena, the driver of jeep, since drove it in a rash and negligent manner, hit a lorry coming in opposite direction, due to which, the petitioner sustained fracture to his back bone, head injury and other injuries on his person. Immediately, he was taken to the Government Hospital, Bellampalli and from there he was shifted to Area Hospital,

Ramakrishnapur and then to Nizam Institute of Medical Sciences (NIMS), Hyderabad. He claims that he spent Rs.30,000/- towards treatment, he was 45 years old, earning Rs.4,033/- per month and, therefore, sought to grant Rs.1,50,000/- as compensation against the owner and insurer of the jeep, so also the owner and insurer of the lorry, who are respondent Nos.1 to 4 respectively.

5 . Respondent Nos.1 and 4, who are owners of the respective vehicles, remained *ex parte* before the Tribunal.

6 . Respondent Nos.2 and 3, who are insurers of the jeep and lorry, respectively, filed their respective counters, opposing the claim. The 2nd respondent contended violation of conditions of the policy, as the jeep was used as taxi, despite there-being prohibition in the policy. Whereas, the 3rd respondent contended that the accident occurred due to rash and negligent driving of the driver of the jeep alone.

7. Based on the above pleadings, the Tribunal framed three issues about fixing responsibility for the accident. During inquiry, on behalf of the petitioner, he examined himself as PW.1 and marked Exs.A-1 to A-19. On behalf of the contesting respondents, neither oral nor documentary evidence was let in.

8 . The Tribunal, on issue No.1, on appraisal of evidence, found that the accident has occurred only due to rash and negligent driving of the driver of jeep. Taking aid of the documentary evidence under Exs.A-1 and A-3 supported by the evidence of PW.1, the Tribunal found issue No.1 in favour of the petitioner and against respondent Nos.1 and 2 only while dismissing the claim against respondent Nos.3 and 4.

9. On issue No.2, the Tribunal making certain observations, granted a sum of Rs.8,660/- towards loss of earnings for two (02) months; a sum of Rs.4,500/- towards medical expenses and extra nourishment and a sum of Rs.1,000/-

towards pain and suffering and, thus, a total amount of Rs.14,160/- was granted as compensation as against the claim for Rs.1,50,000/- with interest at 9% per annum thereon, ordering respondent No.2 to pay the same.

10. It is the aforementioned order which is under challenge by the petitioner in the instant appeal contending in the grounds of appeal that the Tribunal failed to appreciate the injuries sustained by the petitioner and that the Tribunal ought to have awarded the amount for each injury and that the Tribunal failed to appreciate the evidence on record and, finally, sought to grant the balance amount.

11. Heard Sri S. Surender Reddy, learned counsel for the appellant - petitioner, and Sri P. Harinath Gupta, learned counsel for the 3rd respondent – M/s New India Assurance Company Limited. As per the endorsement made by the office, though, the notices were effected on respondent Nos.1, 2 and 4, none appears on their behalf.

12. Perused the order and the evidence on record. As seen from the medical record submitted by the petitioner, it is clear that the petitioner got treated in NIMS Hospital, Hyderabad also for some time, and certainly, keeping in view, the observations contained in the medical record issued by the authorities of NIMS Hospital, more particularly, Ex.A-14, it is to be found that though, lacerations over fore-head were sutured, that the petitioner was unable to move all four limbs and his inability to sensation below the level of neck, and urinary clamp was also applied. Though, the petitioner sustained simple injuries, but they affected the upper and lower arms of the petitioner to some extent, which must have been disabled him from attending to his regular avocation for at least four months. The Tribunal has awarded only an amount of Rs.8,660/- towards loss of earnings for two months by taking his monthly salary as Rs.4,330/-. But, keeping in view, the nature of injuries sustained by the petitioner and the sufferance he had undergone, a sum of Rs.17,320/- (Rs.4,330 x 4) is granted as against the amount of Rs.8,660/- granted by the Tribunal, towards loss of earnings. Towards medical expenses, it is no doubt true, the doctor was not

examined, but the bills were issued from NIMS Hospital, Hyderabad and, therefore, an amount of Rs.12,000/- is granted as claimed by the petitioner as against the claim of Rs.4,500/- granted by the Tribunal. The Tribunal has also granted Rs.1,000/- towards pain and suffering, perhaps taking into consideration the injuries sustained by the petitioner, since there were three injuries and the injury over forehead, which is serious, though simple in nature, a sum of Rs.8,000/- is granted. Thus, in all, Rs.37,320/- is granted as against the amount of Rs.14,160/- granted by the Tribunal as compensation. Concerning the rate of interest, the Tribunal granted the same at the rate of 9% per annum on the amount awarded by it, but, the same is reduced to 7.5% per annum as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**.

13. In the result, the appeal is allowed in part, and the order and decree, dated 07-02-2005, in O.P. No.193 of 2002, passed by the Tribunal are modified, enhancing the compensation to Rs.36,320/- (Rupees thirty six thousand three hundred and twenty only) from Rs.14,160/-with interest thereon at the rate of 7.5% from the date of petition till realization. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

February 12, 2015.

Mgr