

HON'BLE SRI JUSTICE A. SHANKAR

NARAYANA

M.A.C.M.A. No.1785 OF 2005

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JUDGMENT:

Not satisfied with the award of Rs.45,000/- (Rupees forty five thousand) granted by the learned Chairman, Motor Accidents Claims Tribunal – cum – IV Additional District & Sessions Judge (Fast Track Court), Nizamabad (for short 'the Tribunal') as compensation for the injuries sustained by the petitioner in a motor accident, by the order and decree, dated 30-06-2004, in O.P. No.317 of 1999, as against the claim of Rs.1,50,000/-(Rupees one lakh and fifty thousand) laid under Section 166 (1) (a) of Motor Vehicles Act, 1988 (for short 'the Act') read with rule 455 of Andhra Pradesh Motor Vehicle Rules, 1989 (for short 'the Rules'), the instant appeal is preferred by the petitioner 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 Scooter bearing registration No.AP 25E 2883, respectively, 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 11-03-1999, while the petitioner was proceeding on foot from his house towards his General Stores situated at Market in Yellareddy and when he reached near Government Girls Hostel, a scooter bearing

registration No.AP 25E 2883 driven by its rider at high speed in a rash and negligent manner came from behind and hit him, due to which, he sustained multiple fractures. He was immediately shifted to Government Hospital, Yellareddy. He claims that thereafter, he has taken treatment under private doctors, incurring expenditure more than Rs.50,000/- towards medical expenses and, therefore, sought to grant a sum of Rs.1,50,000/- as compensation.

5. The 1st respondent, owner of the scooter, remained *ex parte* before the Tribunal.

6. The 2nd respondent – insurer opposed the claim raising various pleas.

7. Based on the pleadings, the Tribunal framed two issues as to the entitlement of petitioner for compensation, in which direction, the petitioner examined himself as PW.1 and marked Exs.A-1 to A-4, which are certified copies of first information report, charge sheet, wound certificate and docket order in C.C. No.84 of 1999. On behalf of the contesting respondent, neither oral nor documentary evidence was let in.

8. The Tribunal, on issue No.1, on appraisal of evidence, referring to the injuries described in Ex.A-3 and the stand of PW.1 that he sustained fracture to his ribs was an untrue statement, granted a sum of Rs.5,000/- towards one grievous injury sustained by him; Rs.10,000/- towards medical expenses; Rs.10,000/- towards pain and suffering and Rs.10,000/- towards temporary loss of income, making it to a total of Rs.45,000/- as

compensation with interest at 9% per annum thereon.

9. It is the aforementioned order which is under challenge in the instant appeal, contending in the grounds of appeal that the award of compensation is very meager, despite the fact that the Tribunals are obligated with the duty to grant amounts under the heads of transport, extra nourishment and attendant charges etc. and, therefore, sought to grant balance amount.

10. Heard Sri K. Sarala Mahender Reddy, learned counsel for the appellant, and Mrs. W.V.S. Rajeshwari, learned counsel for the respondent No.2 – Insurance Company. None appears for respondent No.1, despite service of notice.

11. Perused the order and the material on record. The description of injury is contained in Ex.A-3 which shows as follows:

I. Lacerated wound on the anterior aspect of the leg about 5 x 3 x 2 cm. in five with exposed bone;

II. Grievous pan swelling deformity, abnormal mobility eruption left side of the left leg with exposed bone.

It is clear that the petitioner sustained grievous injury to his left leg. Of course, the finding recorded by the Tribunal that there were no fractures to the ribs of petitioner is based on legally acceptable evidence through Ex.A-3 and it does not warrant any interference. However, concerning the injury as such, the amount of Rs.5,000/- granted by the Tribunal, when kept in view, the nature of injury sustained by him and the sufferance he has undergone, certainly, it is on lower side and, therefore,

a sum of Rs.25,000/- is granted as against the amount of Rs.5,000/- granted by the Tribunal.

12. The Tribunal has granted Rs.10,000/- towards medical expenses, though, no proof is forthcoming, and towards pain and suffering also the Tribunal distinctly granted a sum of Rs.10,000/-, but there is no challenge from the other side and, therefore, the same are maintained, so also the amount of Rs.10,000/- granted by the Tribunal towards surgery charges. The Tribunal has granted a sum of Rs.10,000/- towards loss of income, somehow, mentioning the age of petitioner as 78 years which was disputed by the learned counsel for the appellant stating that he was 45 years old and in fact, his age was also shown as 45 years in the cause title of original petition, and since his left leg is immobilized, another sum of Rs.10,000/- is granted towards loss of income, making a total of Rs.20,000/- towards loss of income, taking into consideration that for six months he must have immobilized to regain normalcy. The Tribunal has not granted any amount towards extra nourishment. Therefore, a sum of Rs.5,000/- is granted. Towards attendant charges and transport charges, another sum of Rs.5,000/- is granted. Thus, in all, the petitioner is entitled to a sum of Rs.85,000/- (Rupees eighty five thousand) as compensation as against the amount of Rs.45,000/- granted by the Tribunal. Concerning the rate of interest, the Tribunal granted the same at 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**^[1].

13. In the result, the appeal is allowed in part, and the

order, dated 30-06-2004, in O.P. No.317 of 1999, passed by the Tribunal are modified, enhancing the compensation to Rs.85,000/- (Rupees eighty five thousand) from Rs.45,000/- 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

March 03, 2015.

Mgr

[\[1\]](#). 2013 ACJ 1403