

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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M.A.C.M.A. No.1810 of 2005

JUDGMENT:

Dissatisfied with the amount of Rs.1,00,000/- granted as compensation by the order dated 13.04.2005 in O.P.No.38 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-Il Additional District Judge, Ranga Reddy District (for short, 'the Tribunal') as against the claim for Rs.2,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') for the injuries sustained by the petitioner therein, 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 are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts in brief are that on 07.10.2000, at about 11-00 p.m., the petitioner was returning from his brother-in-law's house at Narayanaguda on his motorcycle bearing registration No.ATR 352 and when he reached Saidabad X Roads near Jaihind Hotel, a jeep bearing registration No.AP 37T 4780 came in opposite direction at high speed and in a rash and negligent manner, dashed the motorcycle, due to which, he sustained multiple fracture injuries. Claiming that he was earning Rs.3,000/- as a worker in Swathi Wines, sought Rs.2,00,000/- as compensation from the owner and insurer of the jeep arraying them as respondent Nos.1 and 2.

5. Before the Tribunal, the 1st respondent remained *ex parte*. The

2nd respondent opposed the claim raising various pleas.

6. Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry before the Tribunal, the petitioner examined himself as P.W.1 besides examining Dr.G.Subash Rao as P.W.2 and marked Exs.A.1 to A.12; whereas, on behalf of the 2nd respondent-Insurance Company, no witnesses were examined, but a copy of the insurance policy was marked as Ex.B.1 on consent.

7. The Tribunal, on appraisal of evidence on record, both, oral and documentary, let in by the parties, held issue No.1 in favour of the petitioner. On issue No.2, the Tribunal disbelieved the evidence of P.W.2 in view of the answers he has given in the cross-examination and basing on the description of injuries in Ex.A.4, which reflects compound fracture of both bones of right leg and vascular injury and small lacerated wound on the anterior aspect of the upper part of the right leg, one small lacerated wound on the middle aspect of the ankle point just above the medial malleolus, granted Rs.30,000/- towards grievous injury, Rs.1,500/- each for the two simple injuries, Rs.55,000/- towards medical expenses based on the bills filed by the petitioner, Rs.2,000/- towards transportation and attendant charges, Rs.10,000/- towards pain and suffering, and, thus, totally granted a sum of Rs.1,00,000/- with interest at 9% per annum.

8. Aggrieved of the aforesaid order, the petitioner preferred the instant appeal seeking enhancement of compensation contending in the grounds of appeal that the Tribunal did not properly appreciate the medical evidence let in by the petitioner and has not granted any temporary earnings as the petitioner was bedridden for six months, and, though, the petitioner spent Rs.80,000/- towards medical expenses, the Tribunal only granted Rs.55,000/- under the same head,

and, therefore, sought to grant balance amount.

9. Heard Sri Molugu Krishna Reddy, learned counsel for the appellant-petitioner, Sri C.V.Rajeeva Reddy, learned counsel for the 2nd respondent-Insurance Company. None represents the 1st respondent.

10. The postal endorsement shows that respondent No.1, who remained *ex parte* before the Tribunal, expired. In fact, steps ought to have been taken by the petitioner, but, for the reasons best known to him, no steps were taken. However, respondent No.2 is made jointly and severally liable along with respondent No.2 to pay the compensation. It is open to the petitioner, when execution petition is moved, to bring legal representatives of respondent No.1 on record.

11. Perused the order under challenge and the evidence, both, oral and documentary, let in by the petitioner in order to substantiate his claim for enhancement. The finding recorded by the Tribunal in rejecting the evidence of P.W.2 and discarding Ex.A.6 issued by P.W.2 cannot be termed as perverse as the answers given by P.W.2 would show that he does not know the petitioner sustained injuries and he does not know if at any time the petitioner has undergone treatment prior to 16.05.2004 and the accident took place in the year 07.10.2000, whereas P.W.2 has seen him 'first time on 16.01.2004 to obtain Ex.A.6. Therefore, that finding recorded by the Tribunal does not warrant any interference.

12. So far as the nature of injuries is concerned, Ex.A.4 would reflect that the petitioner suffered compound fracture of both bones of right leg, vascular injury and small lacerated wound on the anterior aspect of the upper part of the right leg, one small wound on the middle aspect of the ankle point just above the medial malleolus. So far as the

amount of Rs.30,000/- granted towards the injury proper is concerned, since both the bones were fractured, it was enhanced to Rs.40,000/-, since the petitioner had to suffer with great inconvenience on account of that injury. The Tribunal granted Rs.1,500/- each for the two simple injuries and the same is enhanced to Rs.3,000/- each making it to Rs.6,000/- for two simple injuries. The Tribunal granted Rs.55,000/- towards medical expenses basing on medical bills filed by the petitioner and the same is confirmed. The amount of Rs.2,000/- granted towards transportation and attendant charges is enhanced to Rs.5,000/-, keeping in view the treatment he has undergone as an inpatient in Yashoda Hospital and NIMS Hospital. The amount of Rs.10,000/- granted by the Tribunal towards pain and suffering is enhanced to Rs.15,000/-. It is true, as rightly contended by the learned counsel for the petitioner that the Tribunal has not granted any amount towards temporary loss of earnings. Therefore, @Rs.1,500/- per month for six months, a sum of Rs.9,000/- is granted towards temporary loss of earnings. Thus, the petitioner is entitled to a total sum of Rs.1,30,000/- as against Rs.1,00,000/- granted by the Tribunal, but however, with interest at 7.5% per annum on the said amount from the date of petition till realization 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 and decree dated 13.04.2005, passed by the Tribunal in O.P.No.38 of 2001 is modified, enhancing the compensation to Rs.1,30,000/- (Rupees one lakh and thirty thousand) from Rs.1,00,000/- (Rupees one lakh), with interest at 7.5% per annum 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.

25th February, 2015

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