

THE HON'BLE SMT. JUSTICE ANIS

M.A.C.M.A. No. 1321 OF 2005

JUDGMENT:

This appeal is filed by the appellant/petitioner under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the award dated 11.01.2005, passed by the II Additional District Judge, Nalgonda at Suryapet, in O.P.No.552 of 2004, awarding compensation of Rs.1,45,000/-.

2. The petitioner filed the above O.P. under Section 166 of the Act, claiming compensation of Rs.2,50,000/- for the injuries sustained by him.

3. The brief averments made in the petition are that on 08.10.2002 at about 3.00 pm., the petitioner started from his house on his cycle to Nagarjuna Paraboiled Rice Mill. When he reached near Engineering College on National High Way No.9, a lorry bearing No.AP-9-U-8102 driven by its driver in a rash and negligent manner came and dashed against the petitioner from back side. As a result, he fell down on the road and sustained grievous injuries on abdomen, fracture of pelvic, rupture of Urethra, fracture of right leg and other injuries. Immediately he was shifted to Government Area Hospital, Suryapet. Thereafter, he was referred to Osmania General Hospital, Hyderabad and from there to NIMS hospital Punjagutta, Hyderabad for better treatment. The doctors conducted operation in pelvic rupture Urethra and abdomen. The doctors advised the petitioner not to walk and stand for about two months. He was completely bed ridden. He spent huge amount for medicines. Prior to the accident he was hale and healthy and used to earn Rs.5,000/- per month by working as driver in rice mill. After the accident he was not in a position to attend his normal work. The police, suryapet (Rural) registered the case against the driver of the crime lorry. Respondent Nos.1 and 2 being owner and insurer of the crime lorry are jointly and severally liable to pay compensation to the petitioner.

4. The first respondent remained *ex parte* before the Tribunal.
5. The brief averments made in the written statement filed by the second respondent are as follows:

The respondent put the petitioner to prove the manner of accident, age, occupation and income of the petitioner. The respondent denied the petitioner undergoing treatment in various hospitals. The compensation claimed by the petitioner is excessive and arbitrary. Therefore, prayed the Court to dismiss the petition.

6. Basing on the pleadings, the Tribunal framed two issues and to substantiate his claim the petitioner examined PWs.1 to 3 and got marked Exs.A.1 to A.10. On behalf of the second respondent, no oral evidence was adduced and no document was marked except Ex.B.1-policy copy.

7. Basing on the evidence on record, the Tribunal held that the accident was occurred due to rash and negligent driving of the driver of the lorry bearing No.AP-9-U-8102, and that the respondents are jointly and severally liable to pay compensation. Accordingly the Tribunal awarded compensation of Rs.1,45,000/- along with interest at 9% p.a.

8. Not satisfied with the compensation awarded by the Tribunal, the appellant/petitioner preferred the present appeal.

9. The learned counsel for the appellant argued that the appellant sustained grievous injuries and took treatment in various hospitals where the Doctors conducted operations; that the appellant incurred huge amounts towards medical expenses; that the Tribunal has not awarded transportation charges and attendant benefits, and finally, prayed the Court to enhance the compensation under the head pain and suffering, and for grant of compensation under the heads of attendant charges and transportation charges.

10. On the other hand the learned counsel for the Insurance Company argued that the Tribunal, after considering the evidence on record, rightly granted just and reasonable compensation under all heads; and that the appellant is not entitled for any enhancement and

finally prayed this Court to dismiss the appeal.

11. Having regard to the submissions made by the learned counsel for the both parties, the points that arise for consideration are:

1. Whether the compensation awarded by the Tribunal is just and reasonable?
2. Whether the appellant is entitled for enhancement of compensation?

12. **Point No.1:**

A perusal of the evidence on record shows that the appellant examined himself as PW.1 and got marked Exs.A.1 to A.9. The respondents have not produced any rebuttal evidence to dispute the documents under exhibits. A perusal of the evidence of PW.1 coupled with Exs.A.1-copy of F.I.R and A.2-copy of charge sheet shows that the driver of the vehicle drove the vehicle in a rash and negligent manner due to which the appellant sustained grievous injuries. Thus the findings of the Tribunal need no interference.

13. **Point No.2:**

Coming to the quantum of compensation, the Tribunal awarded Rs.48,000/- under the head of future loss of income; Rs.80,000/- towards medical expenses; Rs.5000/- towards pain and suffering and Rs.12,000/- towards loss of income. Thus the Tribunal awarded an amount of Rs.1,45,000/- as compensation.

14. As can be seen from the record, apart from the evidence of PW.1, the evidence of PW.3-the Doctor, who treated the appellant, clearly shows that the appellant sustained fracture of Pelvic and right femur bone along with posterior urethral injury and he was operated on 10.10.2002. As the appellant developed burst abdomen, a secondary operation was done on 24.10.2002.

15. The evidence of PW.4-the Orthopedic surgeon also goes to show the grievous injuries received by the appellant. He stated that there is fracture of right femur and shortening of right leg lower limb ½” to the appellant and his deformity is of 60% and he is unable to work as

earlier. PW.4 issued Ex.A.7-disability certificate.

16. A perusal of the above evidence clearly establishes that the appellant sustained grievous injuries and he took treatment in various hospitals by spending huge amounts for which the appellant must have spent some amounts towards transportation charges. Therefore an amount of Rs.5000/- is awarded towards transportation charges.

17. In so far as contention of the appellant that the Tribunal has not awarded compensation for attendant charges is concerned, it is no doubt true that the appellant is resident of Thallagadda locality, Suryapet town, Nalgonda District. Initially he was admitted in Government Area Hospital, Suryapet. Thereafter, he was shifted to Osmania General Hospital, Hyderabad and from there NIMS hospital, Punjagutta, Hyderabad. Therefore somebody must have accompanied the appellant to look after him. Hence an amount of Rs.5000/- is awarded towards attendant charges.

18. In so far as compensation under the head of pain and suffering is concerned, the Tribunal no doubt granted Rs.5000/- under this head, but a perusal of the evidence of PWs.3 and 4 shows that the appellant sustained fracture injuries and he has undergone operations in various hospitals and must have suffered a lot of pain. Therefore further amount of Rs.3000/- is awarded under the head pain and suffering. Thus in total the appellant is entitled to Rs.13,000/- as enhanced compensation.

19. Accordingly, the compensation awarded by the Tribunal is enhanced from Rs.1,45,000/- to Rs.1,58,000/-. The enhanced amount of Rs.13,000/-, carries interest @ 7.5% p.a. from the date of appeal till the date of realisation in view of the in view of the different rate of interests granted by the Hon'ble Supreme Court in the decisions reported in **Sanobanu Nazirbhai Mirza and others v. Ahmedabad Municipal Transport Service**^[1] and **Rebeka Minz and others v. Divisional Manager, United India Limited Insurance Company Limited and another**^[2].

19. In the result, the appeal is partly allowed. No order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

(ANIS, J)

17th July, 2015
Js.

[\[1\]](#) 2013 ACJ 2733

[\[2\]](#) 2012 ACJ 2328