

THE HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.852 of 2005

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JUDGMENT

Having got dissatisfied with the award of Rs.57,500/- as compensation for the injuries sustained by the petitioner, as against the claim of Rs.2,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988, by order dated 06.05.2004 in O.P.No.620 of 2002 on the file of the Special Judge for trial of cases under E.C.Act-cum-III Additional Metropolitan Sessions Judge-cum-XVII Additional Chief Judge (MACT), Hyderabad, the instant appeal is filed seeking to enhance the compensation.

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

3. The facts, in brief, are that on 21.04.2001, the petitioner along with his brother-in-law was proceeding to their relative's house at Jeedimetla on a scooter bearing registration No.AP 16K 2212 from their house in Banjara Hills and at about 10.30 PM., when they reached Fathenagar bridge at Sanathnagar, an ambassador car bearing registration No.AAU 3855 came in opposite direction, driven by its driver in a rash and negligent manner at high speed and hit their scooter, due to which, the petitioner sustained fracture to his left femur, popliteal nerve injury on left leg and other injuries on his person. Hence, he laid claim for Rs.2,00,000/- having undergone treatment in Nizam's Institute of Medical Sciences, Hyderabad.

4. The first and second respondents are the owner and insurer of the aforesaid ambassador car. Both the respondents contested the claim by filing separate

counters. The first respondent attributes rash and negligent driving to the petitioner himself stating that soon after the accident, his driver shifted the petitioner in the same car to Gandhi Hospital and also paid amount for admission of the petitioner and met with financial needs of the petitioner in the said accident to a tune of Rs.10,000/-. However, he stated that since the accident vehicle was insured with the second respondent, he is not liable to pay compensation sought for by the petitioner. The second respondent-insurance company contested the claim raising various pleas.

5. Based on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry, the petitioner besides examining himself as P.W.1 has examined

Dr. G. Subhash Rao as P.W.2 and marked Exs.A1 to A12 in order to substantiate his claim for compensation. On behalf of the second respondent, no witnesses were examined. However, a copy of the insurance policy was marked as Ex.B.1 on consent.

6. The Tribunal, on appraisal of evidence let in by the petitioner, held issue No.1 in favour of the petitioner observing that due to rash and negligent driving of the driver of the ambassador car, accident has occurred. On issue No.2, the Tribunal has discarded the evidence of P.W.2 and so also the disability certificate issued by P.W.2 marked as Ex.A5. The Tribunal granted Rs.10,000/- towards medical expenses though the medical bills-Ex.A3 would show the amount of Rs.32,709/- issued from NIMS Hospital. Taking into consideration the evidence of P.W.2, who issued disability certificate-Ex.A5 showing assessment at 40% disability said to have been sustained by the petitioner, the Tribunal considered it as 20% towards overall disability of the petitioner and granted Rs.10,000/-towards second operation charges; Rs.20,000/- towards pain and suffering and Rs.17,500/- towards disability suffered by the petitioner computing his salary at Rs.3,200/- per month basing on Ex.A6-Salary Certificate. Thus, granted a total sum of Rs.57,500/- with interest at 9% per annum from the date of petition till realisation.

7. It is the aforesaid order, which is challenged in the instant appeal contending in the grounds that the Tribunal, despite clear finding that due to rash and negligent driving of the driver of the car, the accident occurred, but did not award just and reasonable compensation despite the fact that the petitioner sustained fracture of shaft of left femur and injury to popliteal nerve in his left leg, on account of which, he became disable to walk normally and properly. It is also stated that the Tribunal ought to have taken 100% loss of earning capacity on account of 40% physical disability assessed by P.W.2. It is further stated that, though, the petitioner spent more than Rs.64,000/- towards medical expenses, the Tribunal awarded only Rs.10,000/- and, therefore, sought to enhance the compensation by granting the balance amount of Rs.1,42,500/-.

8. Heard Sri M. Krishna Reddy, learned counsel for the appellant and Sri Sriman, learned Standing Counsel for the second respondent-insurance company. The first respondent, though, served with notice, none appears for him.

9. It is the submission of the learned counsel for the appellant that, though, there is clinching documentary evidence on record issued by the NIMS Hospital and Ex.A2 showing the petitioner's treatment and deposit of Rs.10,000/- as EMD and even Ex.A3 alone showing the hospital charges at Rs.32,709/- besides the huge amount towards purchase of medicines from the NIMS dispensary, still, the Tribunal granted Rs.10,000/- only without assigning any reason as to either accepting or rejecting the documentary evidence of Exs.A3 and A4. It is also his submission that despite the fact that the petitioner is unable to walk with 100% deficiency and the evidence of P.W.2 showing that the petitioner cannot attend to his duties as efficiently as he used to attend the duties prior to the accident in view of the disability sustained by him, still, the Tribunal awarded meagre amount and, therefore, he sought to grant the balance amount.

10. On the other hand, learned Standing Counsel for the second respondent-insurance company supported the order of the Tribunal contending that the

Tribunal has awarded just and adequate compensation and the order of the Tribunal cannot be faulted with.

11. Perused the order and the evidence on record, both, oral and documentary, let in by the petitioner. It is, no doubt, true the Medical Officer from NIMS Hospital was not examined by the petitioner, but it is clear that Ex.A2 was issued from NIMS Hospital, so also Ex.A3 showing that the petitioner was admitted in NIMS Hospital on 23.11.2001 and discharged on 23.01.2002. The accident in the instant case had taken place on 21.04.2001 at 10.30 AM. The name of the petitioner is finding place in Exs.A2 and A3 respectively.

12. The evidence of P.W.2 shows that he worked for six months in NIMS Hospital during the year 1982. When he was cross-examined, he answered to certain questions that the treatment taken by P.W.1 in NIMS Hospital was perfect treatment. Even to a suggestion that after P.W.1 has taken treatment at NIMS Hospital, he required no further treatment at all, it was denied by P.W.2. The said answer and the suggestion put to P.W.2 are sufficient enough to hold that the documents marked as Exs.A2 and A3 are genuine documents, in which case, even the non-examination of medical officer or any person from the NIMS Hospital connected with the financial department would not affect the genuineness of Exs.A2 and A3. As per Ex.A2, the petitioner sustained fracture of left femur. The amount covered by Ex.A3 would show Rs.32,709/-. The Tribunal having referred to Ex.A3 restricted the amount to Rs.10,000/- despite the fact that Ex.A3 contains the signature and the seal of the Deputy Financial Controller of NIMS. All the receipts numbering 5 bear the emblem of NIMS hospital. Therefore, the petitioner is entitled to a total amount mentioned therein i.e., Rs.32,709/-. The petitioner has submitted a statement along with the bills for purchase of medicines in NIMS dispensary. The amounts covered by these bills are not finding place in Ex.A3. Ex.A3 reflects hospital charges only under relevant columns and the petitioner was treated as inpatient for two months in NIMS. Certainly, it cannot be ruled out that the petitioner did not purchase medicines covered by Ex.A3-bunch of medical bills. The petitioner has filed the statement showing the amounts and the details, such as, the dates on which the medicines were purchased and the amounts there for. The said statement

shows the total amount of Rs.64,060/-. There cannot be any reason to discard the amounts mentioned in the bills merely on the ground that there were no prescriptions issued therefor. A perusal of the dates mentioned in the said bills would show that they relate to the period during which, the petitioner was treated as inpatient in NIMS. Therefore, the amount of Rs.64,060/- is also granted. Thus, towards medical expenses, the petitioner is entitled to Rs.96,769/- rounded off to Rs.96,770/- as against Rs.10,000/- granted by the Tribunal.

13. Coming to the other amounts granted by the Tribunal i.e., Rs.10,000/- towards second operation charges, the same is maintained. It appears that the Tribunal has not granted any amount towards loss of temporary earnings. When the petitioner was treated as inpatient in NIMS Hospital as referred to above, certainly, he must have been disabled for at least 4 months and therefore, at the rate of Rs.3,200/- per month for four months, a sum of Rs.12,800/- is granted. The Tribunal has granted Rs.20,000/- towards pain and suffering and the same is maintained. The Tribunal has granted Rs.17,500/- towards disability accepting 20% overall disability. Since the Tribunal has not applied any formula and other details are not forthcoming to apply the formula from the order, it is desirable to enhance the same to Rs.40,000/-. Thus, the petitioner is totally entitled to Rs.1,79,570/- as against Rs.57,500/- granted by the Tribunal. So far as rate of interest is concerned, the Tribunal has granted 9% per annum. The same is reduced to 7.5% per annum as per the decision of the Honourable Apex Court in **Rajesh and others v. Rajbir Singh and others**.

14. Accordingly, the Civil Miscellaneous Appeal is allowed in part modifying the award passed by the Tribunal, by enhancing the compensation from Rs.57,500/- to Rs.1,79,570/-, and reducing the rate of interest from 9% to 7.5% per annum as indicated above. There shall be no order as to costs.

15. As a sequel thereto, miscellaneous applications, if any, pending in this

appeal stand disposed of.

A. SHANKAR NARAYANA, J

20th April, 2015

sj