

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

MACMA No. 775 of 2005

Judgment:

Having got dissatisfied with the award of Rs.4,25,000/- as compensation, by the order, dated 16.11.2004, in OP No.1075 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal-cum–Chief Judge, City Civil Courts, Hyderabad, as against the claim of Rs.6,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), the instant appeal is preferred by the petitioner seeking to enhance the compensation.

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

3. The facts, in brief, are that on 09.11.2000 at about 12.20 PM, when the petitioner was proceeding on his Hero Honda motorcycle bearing registration No.AAH 1337, from Abids to Charminar via Osmangunj road and, having switched on the right indicator, indicating the direction that he intends to take right turn near road divider, still, the driver of Mitsubishi Canter Van bearing registration No.AP-9U-1176, owned by the first respondent and insured with the second respondent, driven it in a rash and negligent manner at high speed and dashed the motor cycle from behind, due to which, he fell down and sustained fracture to his left leg, right forearm and multiple injuries all over his person. He was immediately shifted to Osmania General Hospital, where he was treated as inpatient. The concerned Station House Officer, also registered a case in Crime No.182 of 2000 against the driver of the Van, under Section 337 IPC initially and later altered to Section 338 IPC as per Ex.A2 – certified copy of charge sheet. The petitioner claiming that he was the sole earning member in his family and he was confined to bed, spent huge amount towards medical

expenses, sought a total sum of Rs.6,00,000/- as compensation.

4. The first respondent – owner of the vehicle did not choose to contest the matter and remained *ex parte*.

5. The second respondent – Insurance Company opposed the claim disputing the factum of the petitioner being an earning member, despite prosecuting his graduation course and required the petitioner to prove the material allegations and sought to dismiss the claim petition with costs.

6. The Tribunal, based on the said pleadings, framed three (3) issues in order to fix the responsibility for the accident. During enquiry, the petitioner, besides examining himself as PW.1, has examined one Dr. C. Kamaraj as PW.2 and marked Exs.A1 to A19. On behalf of the second respondent – Insurance Company, no witnesses were examined, but the copy of insurance policy was marked as Ex.B1.

7. The Tribunal, on appraisal of evidence of PW.1 supported by Exs.A1 to A3, which are the certified copies of FIR, charge sheet and medico legal record respectively, held issue No.1 in favour of the petitioner observing that both the respondents are jointly and severally liable to pay compensation.

8. On issue No.2, taking into consideration the evidence of PW.2 and the circumstance that on five occasions the petitioner had to undergo surgical interventions, but accepting the partial permanent disability at 35% as assessed by PW.2, since there was shortening of left leg by 1 ½ inches and, considering the monthly earnings as part-time employee at Rs.1,000/-, applying the multiplier '18', taking the age of the petitioner as 21 years on the date of accident, arrived at Rs.75,600/- towards future loss of earnings, but rounded it off to Rs.75,000/-, besides granting Rs.2,99,644/- towards medical expenses and Rs.50,000/- towards pain and suffering and, thus, a total sum of Rs.4,25,000/- was granted with interest at 9% p.a., thereon.

9. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds of appeal that the Tribunal, despite the evidence of PW.2 showing that the appellant underwent surgeries for six times and that he requires Rs.60,000/- to Rs.70,000/- for further operation besides Rs.15,000/- to Rs.20,000/- for medicines, still, awarded meagre amount towards future loss of earning capacity and even the amount of Rs.50,000/- awarded towards pain and suffering is also on lower side and, therefore, sought to grant balance amount of Rs.1,75,000/-.

10. Heard Sri M. Vijay Reddy, learned counsel for the appellant, and Sri G. Vishweshwar Reddy, learned counsel for the second respondent, and, in fact, the appeal against the first respondent was dismissed for default, by the order, dated 02.01.2012, but the learned counsel represents that he filed a memo in USR No.2043 of 2015 along with postal acknowledgment showing that the notice was served on the first respondent. A perusal of the record discloses that such a memo was filed on 13.04.2015, which was subsequent to filing the petition to set aside the dismissal order, dated 02.01.2012. Somehow, subsequent to the order in MACMAMP No.445 of 2015, the Registry has not assigned any number to the MACMAMP (SR) No.4896 of 2015 and it has been lying in the file. Be that as it may, MACMAMP (SR) No.4896 of 2015 deemed to have been allowed as delay itself was condoned and service was also effected.

11. Perused the order and material on record. The finding recorded by the Tribunal accepting 35% partial permanent disability, which was assessed by PW.2, since based on appreciation of evidence and well reasoned, it does not suffer from any infirmity, besides the Insurance Company not challenging the said finding and, therefore, the same is maintained, in which case, the disability accepted by the Tribunal at 35% cannot be commented with.

12. So far as the medical expenses are concerned, admittedly, there is no material placed by the petitioner/appellant that he has undergone further surgical intervention, which PW.2 was speaking in his evidence that would require an approximate expenditure of Rs.60,000/- to Rs.70,000/- besides cost of medicines

about Rs.15,000/- to Rs.20,000/- and, therefore, the amount of Rs.2,99,644/- granted by the Tribunal towards medical expenses does not require any enhancement and, hence, the same is confirmed.

13. Concerning the earnings of the petitioner, the Tribunal has taken Rs.1,000/- per month, taking into consideration that the petitioner studied intermediate and must be doing some job and getting minimum wage. The stand of the petitioner has been that he was earning Rs.1500/- per month and asserted the same in his evidence, but, nothing is brought out in his cross-examination to condemn the said assertion. Therefore, treating the income at Rs.1500/- per month or Rs.18,000/- per annum and applying the multiplier '18' with 35% disability the future loss of earning capacity is arrived at Rs.1,13,400/-. The Tribunal has granted Rs.50,000/- towards pain and suffering. The same is enhanced to Rs.60,000/-, since he has undergone six surgical interventions. The Tribunal has not granted any amount towards extra nourishment. A sum of Rs.15,000/- is granted towards extra nourishment. Towards transport and attendant charges a sum of Rs.5,000/- and 10,000/- respectively are granted. Thus, the petitioner is entitled to a total sum of Rs.5,03,044/- as against Rs.4,25,000/- granted by the Tribunal. However, in view of the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**, the interest is granted at 7.5% p.a., as against 9% p.a., granted by the Tribunal, on the total sum of Rs.5,03,044/- from the date of petition till realisation.

14. Accordingly, the MACMA is allowed in part modifying the impugned award passed by the Tribunal, by enhancing the compensation and reducing the rate of interest as stated supra. There shall be no order as to costs.

15. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal shall stand closed.

A. SHANKAR NARAYANA, J

Date: 16.04.2015

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