

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A. C.M.A. No.1123 OF 2005

JUDGMENT:

Dissatisfied with the award of Rs.26,000/- towards compensation as against the claim of Rs.1,56,000/-, laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') seeking enhancement of the same, petitioner preferred this Civil Miscellaneous Appeal, under Section 173 of the Act, against the order and decree, dated 20-01-2005, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - XI Additional Chief Judge (Fast Track Court), Hyderabad, in O.P. No.2394 of 2002.

2. The appellant herein is the petitioner (claimant) in the O.P. before the Tribunal, while respondent Nos.1 and 2 viz., Andhra Pradesh State Road Transport Corporation and its Depot Manager, Ranigunj Depot, are respondent Nos.1 and 2, respectively.

3. For the sake of convenience, the appellant is hereinafter referred to as petitioner and the respondents as Corporation.

4. The fact-situation occurring in the instant case is that on 17-08-2002 at about 3-40 p.m., while the petitioner was proceeding on his bicycle near Laxmi Complex, Erragadda, APSRTC bus bearing No.AP-10-Z-6660 driven in a rash and negligent manner at high speed, dashed his cycle from behind, due to which, he fell down and sustained fracture to his left patella and other injuries all over his person. Claiming that he spent huge amount towards medical expenses, undergone treatment at Gandhi Hospital for more than two

(2) months, sought a sum of Rs.1,56,000/- towards compensation from the respondents.

5 .The Corporation filed counter opposing the claim of the petitioner by raising various pleas.

6. The Tribunal framed three (3) issues in the direction of fixing responsibility for the accident. During enquiry, petitioner examined himself as PW.1 and marked Exs.A-1 to A-24. On behalf of the Corporation, driver of the bus that involved in the accident was examined as RW.1, but no documents were marked.

7. The Tribunal, on issue No.1, on appraisal of evidence, both, oral and documentary, let in by the petitioner, held it in affirmative. On issue Nos.2 and 3, keeping in view, the petitioner was treated as inpatient for about two months and six days, not accepting Exs.A-3 and A-4, extract of the accident register and discharge card, respectively, granted amounts under various heads making it to a total sum of Rs.26,000/- assigning reasons therefor, with interest at 9% per annum.

8 .It is the aforesaid order which is under challenge by the petitioner in the instant appeal seeking enhancement of compensation on the ground that the Tribunal did not properly appreciate Exs.A-23 and A-24.

9 .Heard Sri K. Venkat Ram Reddy, learned counsel for the petitioner (appellant), and Sri N. Vasudeva Reddy, learned standing counsel for respondent No.1 Corporation.

10. The appeal against respondent No.2 - Depot Manager of Ranigunj was dismissed for default by the order of this Court, dated 04-01-2012. However, it makes no difference since respondent No.2 is no other than the employee of respondent No.1 Corporation and contested the matter before the Tribunal and suffered decree.

11. Perused the order under challenge and the evidence, both, oral and documentary, let in by the parties.

12. A perusal of Ex.A-4, which is discharge card issued by the Gandhi Hospital, clearly shows that the petitioner has undergone treatment for more than two months six days and he sustained fracture of left leg patella and prescription was also given advising him to come for review after ten days. Ex.A-4 was issued at the inception stage and since it was shown in Ex.A-3, extract of the accident register, the Tribunal was not right in not accepting Exs.A-3 and A-4. It is not in dispute that the petitioner underwent surgical intervention for skin grafting since bone was exposing. Hence, keeping in view, the nature of injury sustained by the petitioner and the treatment he has undergone for a considerable period in Gandhi Hospital, the amount of Rs.9,000/- granted by the Tribunal towards loss of earnings is enhanced to Rs.18,000/- for a period of four (4) months as against two months. Towards transportation to hospital, a sum of Rs.1,000/- was granted by the Tribunal and the same is enhanced to Rs.2,000/-. Towards medicines, the Tribunal granted Rs.5,000/- and the same is confirmed. For further operation, a sum of Rs.10,000/- is granted, though, the petitioner would have undergone the same by this time in the very same hospital, which is a Government Hospital. Hence, confirmed. Towards extra-nourishment, the amount of Rs.5,000/- granted by the Tribunal is confirmed. Towards damages to clothes and articles, the amount of Rs.1,000/- granted by the Tribunal is confirmed. The Tribunal has not discussed anything about Ex.A-24 disability certificate issued by Dr. B.

Ramakrishna. However, the permanent disability put-forth by the petitioner cannot be accepted since he failed to examine the medical officer who issued Ex.A-24, more so, when he sustained a simple fracture to patella. However, so far as fracture is concerned, the Tribunal has not granted any amount except the amount of Rs.5,000/- towards pain and suffering, as he has undergone skin grafting also. Hence, the same is enhanced to Rs.30,000/- which includes injury proper.

13. Thus, the petitioner is entitled to a total compensation of Rs.71,000/- (Rupees seventy one thousand) as against Rs.26,000/- awarded by the Tribunal, and the same is accordingly granted, with interest at 7.5% per annum, on the entire compensation, as against 9% granted by the Tribunal, from the date of petition till realisation, as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**.

14. Accordingly, the Civil Miscellaneous Appeal is allowed in part modifying the impugned award passed by the Tribunal, by enhancing the compensation and reducing the rate of interest, 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

March 19, 2015.

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