

HON'BLE SRI JUSTICE A. SHANKAR

NARAYANA

M.A.C.M.A. No.3103 OF 2005

JUDGMENT:

Dissatisfied with the award of Rs.1,25,000/- as compensation by the order, dated 02-01-2003, in O.P. No.645 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal – cum –

I Additional District Judge, West Godavari District at Eluru (for short 'the Tribunal'), as against the claim of Rs.3,00,000/- laid by the petitioner under Sections 166 and 163A of the Motor Vehicles Act,1988 (for short 'the Act'), the petitioner preferred the instant appeal under Section 173 of the Act seeking enhancement.

2. The appellant herein is the petitioner in O.P. before the Tribunal, while respondent Nos.1 to 3 herein, who are driver, owner and insurer of Lorry bearing registration No.AP 16V 1152, respectively, are Respondent Nos.1 to 3, respectively.

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

4. The fact-situation occurring in the instant case is that on 20-01-2001 at about 8.45 p.m., the petitioner was proceeding to his uncle's house carrying milk to deliver the same, and on reaching Jeans Centre near Pedagogpuram main road of Palakole, at about 9.00 p.m. a lorry bearing registration No.AP 16V 1152 belonging to respondent No.2 driven by respondent No.1 in a rash and negligent manner, hit the petitioner from behind, due to which, he fell down

and sustained damages to his spinal cord. The lorry proceeded to some distance and stopped there. The petitioner was shifted to Government Hospital, Palakole where first-aid was given. He was then shifted to Coastal Emergency Hospital, Bhimavaram. The petitioner sustained fracture to his pelvis and was treated there from 21-01-2001 to 31-01-2001. Since there was no relief, he was admitted in Nizam's Institute of Medical Sciences (NIMS) at Hyderabad in Urology Department on 16-07-2001. He was advised to take treatment for a period of five years. He spent Rs.1,50,000/- towards medical expenses. Hence, he sought a sum of Rs.3,00,000/- as compensation. The concerned police also registered a crime against the driver of the lorry.

5. Before the Tribunal, respondent Nos.1 and 2, who are driver and owner of the lorry, remained *ex parte*.

6. Respondent No.3 – Insurance Company opposed the claim by raising various pleas in the counter.

7. The Tribunal has framed three issues about the responsibility for the accident.

8. During inquiry before the Tribunal, the petitioner examined himself as PW.1 and marked Exs.A-1 to A-20. On behalf of respondent No.3, no witnesses were examined, but copy of insurance policy was marked as Ex.B-1.

9. On issue No.1, the Tribunal on assessment of evidence let in by the petitioner tendered finding favouring the petitioner. On issue No.2, basing on the medical evidence and the evidence of PW.1, the Tribunal has granted Rs.40,000/- towards permanent

disability; Rs.15,000/- towards loss of earning capacity; Rs.15,000/- towards transport charges; Rs.10,000/- towards extra nourishment; Rs.15,000/- towards mental agony and Rs.30,000/- towards medical expenses and, thus, the Tribunal has granted a total amount of Rs.1,25,000/- as compensation with interest at 9% per annum thereon.

10. It is the aforesaid order which is under challenge in the instant appeal seeking enhancement contending in the grounds that the Tribunal has not properly appreciated the evidence and the permanent disability sustained by the petitioner and, therefore, sought to grant balance amount.

11. Heard Sri N. Nageswara Rao, learned counsel for the appellant – petitioner, and Sri G. Purushotham Rao, learned Standing Counsel for respondent No.3 – Insurance Company. As per cause title it shows that the petitioner claimed no relief against respondent Nos.1 and 2 in this appeal.

12. Perused the order and the evidence on record, both, oral and documentary.

13. So far as the finding recorded by the Tribunal on issue No.1 is concerned, the same need not be adverted to now as the request herein is to enhance the compensation in an appeal preferred by the petitioner.

14. On determination of compensation, the Tribunal having appreciated the evidence on record granted various amounts under the relevant heads making a total of Rs.1,25,000/-. Admittedly, the Medical Officer is not examined, but, however,

relevant discharge cards and other relevant documents have been filed by the petitioner. It is needless to mention that Ex.A-2 would reflect the injuries sustained by the petitioner and he was treated initially at Palakole and from there he was shifted to Coastal Emergency Hospital, Bhimavaram, where he took treatment for three months and suffered with urinary track problem on account of the accident, and even he was referred to NIMS, Hyderabad, where he had undergone treatment in Urology Department and undergone three surgical interventions. The petitioner, no doubt, submitted medical bills worth Rs.1,50,000/- towards medical expenses and Rs.50,000/- towards transport charges, but the Tribunal has not acceded to the said requests, but only granted Rs.30,000/- towards medical expenses and Rs.15,000/- towards transport charges. But, keeping in view, the nature of treatment he had undergone for three months in Coastal Emergency Hospital at Bheemavaram, certainly, if not Rs.1,50,000/-, he is entitled to Rs.75,000/- as against Rs.30,000/- granted by the Tribunal towards medical expenses. Towards transport charges, not only he was treated in three hospitals, but he attended for review. Keeping in view the nature of injuries he sustained and sufferance he had undergone, it is enhanced to Rs.25,000/-.

15. Turning to permanent disability towards which, Rs.40,000/- was granted by the Tribunal, admittedly, the doctor is not examined and no permanent disability certificate is forthcoming which ought to be exhibited and proved through the medical officer. In the absence of the same, for the injury as such, the compensation has to be granted. The Tribunal has granted Rs.40,000/- towards permanent disability, but treating it as a temporary disability, but still, keeping in view, the sufferance he

had undergone, a sum of Rs.75,000/- is granted as against Rs.40,000/- granted by the Tribunal which includes for the injury as well as pain and suffering. The Tribunal granted Rs.10,000/- towards extra nourishment, but the same is enhanced to Rs.25,000/-. Towards mental agony, Rs.15,000/- granted by the Tribunal is confirmed. Towards temporary loss of earnings, the Tribunal has granted Rs.15,000/-. But, keeping in view the continuing permanent disability though temporary for a year he would not have become normal and, therefore, @ Rs.3,000/- per month, a sum of Rs.36,000/- is granted. Thus, in all, the petitioner is entitled to Rs.2,51,000/- as compensation as against the amount of Rs.1,25,000/- awarded by the Tribunal.

16. Concerning rate of interest, the Tribunal has granted the same at 9% per annum, the same is not disturbed. But, however, on the enhanced amount of Rs.1,26,000/- interest is granted at the rate of 7.5% per annum from the date of petition till realization, as per the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**^[1].

17. In the result, the appeal is allowed in part, and the order and decree, dated 02-01-2003, in O.P. No.645 of 2001, passed by the Tribunal, are modified, enhancing the compensation to Rs.2,51,000/- (Rupees two lakhs and fifty one thousand) from Rs.1,25,000/- (Rupees one lakh and twenty five thousand) with interest at the rate of 9% per annum on the amount of Rs.1,25,000/- granted by the Tribunal and at the rate of 7.5% per annum on the enhanced amount of Rs.1,26,000/- (Rupees one lakh and twenty six thousand) from the date of petition till realization.

There shall be no order as to costs.

18. As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

December 23, 2015.
Mgr

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