

HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

M.A.C.M.A.No.669 of 2006

JUDGMENT:

Dissatisfied with the award of Rs.45,000/-, for the injuries sustained by the petitioner in a road accident, as against the claim of Rs.1,25,000/-, laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), by the order dated 07.12.2005 in O.P.No.248 of 2004 on the file of the Chairman, Motor Accidents Claims Tribunal –cum- Principal District Judge, Medak at Sangareddy, the instant appeal is preferred.

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

Facts, in brief, are that, on 28.01.2004, while the petitioner was travelling in an auto bearing No.AP-23T-6033, at about 4.00 p.m, and when reached the limits of Ramateertham and Mungi Villages, since the driver of the auto driven it in a rash and negligent manner, it turned upside down resulting fracture of right femur and other injuries to him. He was shifted to Government Hospital, Zaheerabad and, from there, he was shifted to Gandhi Hospital, Secunderabad, where he underwent operation. The police registered a case against the driver of the auto. The petitioner claims that he was earning Rs.4,000/- p.m. but, due to the accident, he was unable to attend to his profession of labourer, and sought the aforesaid amount.

The first respondent remained ex parte. The second respondent opposed the claim contending that the driver permitted 12 passengers to travel, thus, there was overloading and, thereby, the accident occurred and, therefore, it is not liable to pay compensation.

The Tribunal framed three issues about the responsibility for the accident. During enquiry, the petitioner, besides examining himself as PW.1, examined Dr P.Krishna Rao, Orthopaedic Surgeon, Bhavani Hospital, Bidar, as PW.2 and marked Exs.A.1 to A.13. On behalf of the respondents, no witnesses were examined, but a copy of the insurance policy was marked as Ex.B.1 on consent.

The Tribunal on issue No.1 held in affirmative. On issue No.2, basing on the evidence of PW.1, and Exs.A.1 to A.5, while discarding Exs.A.7 to A.13, on the ground that PW.2 himself admitted, in his cross-examination that the fracture sustained by PW.1 was united in the treatment given in Gandhi Hospital, Secunderabad and, thereby granted a sum of Rs.30,000/- towards grade-I compound comminuted fracture of right femur; Rs.5,000/- towards medical expenses; Rs.5,000/- towards extra nourishment; and Rs.5,000/- towards transportation and other incidental charges.

It is the aforesaid order with which the petitioner got dissatisfied and sought for enhancement contending in the grounds that the Tribunal did not properly appreciate evidence and, without assigning reasons, discarded the evidence of PW.2, Orthopaedic Surgeon, and, therefore, sought to grant the balance amount.

Heard Sri K.Raji Reddy, learned Counsel for the appellant. No representation on behalf of the first respondent. Though, served with notice, none appears for the second respondent.

Perused the order and evidence, oral and documentary, let in by the parties.

Concerning determination of compensation, the petitioner was referred to Gandhi Hospital, Secunderabad, from Government Hospital, Zaheerabad where he was treated as an inpatient from 28.01.2004 to 21.02.2004, conservatively, as per the evidence of PW.1 one and half years later, he was admitted in Bhavani Nursing Home, Bidar, but nothing is forthcoming as to why he again got himself admitted under Dr.P.Krishna Rao, PW.2. In fact, the evidence of PW.2 itself clearly shows that grade-I compound comminuted fracture got united in the treatment given in Gandhi Hospital, Secunderabad which finding was also recorded by the Tribunal at page No.5 of the order under challenge. Therefore, the Tribunal rightly rejected the evidence of PW.2, and the documentary evidence relating to Bhavani Hospital, Bidar. However, the Tribunal granted compensation of Rs.30,000/- for grade-I compound comminuted fracture of right femur. Certainly, that amount is on lower side, and it is increased to Rs.50,000/- keeping in view, the sufferance he has undergone. Rs.5,000/- granted by the Tribunal towards medical expenses is confirmed; and Rs.5,000/- granted towards extra nourishment is enhanced to

Rs.10,000/-. The Tribunal, however, has not granted any amount towards loss of temporary earnings. When, kept in view, the nature of injuries, certainly, the petitioner would not have resumed to his occupation for atleast for a period of six months. Taking into consideration, that he must be earning Rs.2,000/- p.m. as a labourer, for six months, Rs.12,000/- is granted. Thus, the petitioner is granted Rs.37,000/- by way of enhancement and thus, it works out to a total sum of Rs.82,000/- as against Rs.45,000/- granted by the Tribunal.

The Tribunal granted interest at 7.5% p.a. and the same is maintained in view of the decision of the Hon'ble Supreme Court in Rajesh v. Rajbir Singh.

The Appeal is, thus, allowed in part. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand disposed of.

A.SHANKAR NARAYANA,J

Date: 25.03.2015

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