

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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M.A.C.M.A. No.575 of 2006

JUDGMENT:

Dissatisfied with the amount of Rs.4,000/- granted as compensation by the order dated 31.05.2005 in O.P.No.170 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Nizamabad (for short, 'the Tribunal') as against the claim of Rs.2,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') and the Rules framed thereunder, for the injuries sustained by the petitioner in a road accident, the instant appeal is preferred seeking enhancement of compensation.

2. The appellant herein is the petitioner, while the respondent Nos.1 and 2, who are the owner and insurer of the accident vehicle respectively, were respondents in the original petition.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts in brief are that on 31.05.2001, the petitioner along with other passengers boarded a jeep bearing registration No.AP 1C 4284 at Mudhole to proceed to Nizamabad and when it reached outskirts of Mittapoor village at about 10-30 a.m., since the driver of the jeep driven it in a rash and negligent manner at high speed on the B.T.road connecting Modhole and Nizamabad, he lost control over the jeep, and, as a consequence, it hit the road side tree, due to which she sustained grievous injuries all over her person, and, therefore, sought Rs.2,00,000/- as compensation from respondent Nos.1 and 2, who are the owner and insurer of the jeep.

5. Respondent No.1-owner of the accident vehicle remained *ex parte*. Respondent No.2-insurer opposed the claim raising various pleas.

6. Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry, the petitioner examined herself as P.W.1 besides examining Dr. T.Narsing Rao as P.W.2 and marked Exs.A.1 to A.4 besides marking Ex.C.1, which is disability certificate issued by P.W.2, to

substantiate her claim; whereas, on behalf of respondent No.2, one Devarao Pawar, from its local branch, was examined as R.W.1 and a copy of insurance policy was marked as Ex.B.1 on consent.

7. The Tribunal, on appraisal of evidence, both, oral and documentary, let in by the petitioner, held issue No.1 in favour of the petitioner; and on issue No.2, disbelieving Ex.C.1 as well as the evidence of P.W.2 observing that there was a direction from this Court to the effect that the evidence of Dr.T.Narsing Rao cannot be relied on in awarding compensation and in that view of the matter, disbelieved the nature of injuries described as grievous injuries, more so, observing that the X-ray film was not filed, which alone would prove that the injury sustained by the petitioner was grievous injury, and, thereby, treated the injuries as simple in nature and awarded a sum of Rs.4,000/- with interest at 9% per annum.

8. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the Tribunal did not properly appreciate the evidence of P.W.2 and the medical evidence Exs.A.3 and C.1 despite the fact that the petitioner sustained 50% partial permanent disability.

9. Heard Sri M.Rajamalla Reddy, learned counsel for the appellant-claimant, and Sri R.K.Suri, learned Standing Counsel for the 2nd respondent-Insurance Company. Despite service of notice on the 1st respondent-owner of the vehicle, none appears for him.

10. Perused the order under challenge and the evidence on record, both, oral and documentary, let in by the petitioner. The finding recorded by the Tribunal in discarding Ex.C.1, as well as evidence of P.W.2, with regard to the partial permanent disability assessed by P.W.2 at 50% is based on appreciation of evidence of P.W.2-Medical Officer and the answers he has given in his cross-examination. Therefore, it does not warrant interference. In fact, in his cross-examination, he admits that he has not obtained X-ray before issuing Ex.C.1 and he has not treated P.W.1 at all and that there is Medical Board in Nizamabad and he was not the member of the said Board and he has issued Ex.C.1 disability certificate in his private capacity. In such an event, certainly, no weight can be attached to Ex.C.1 as well as evidence of P.W.2, and, therefore, the partial permanent disability set up by the petitioner is rejected.

11. Concerning Ex.A.3, which is the wound certificate, said to have issued from the Government Hospital, the same was issued by the very same doctor T.Narsing Rao (P.W.2). But in fact, in his cross-examination, he makes an unequivocal admission that he has never treated P.W.1 at all. In such an event, it is doubtful as to how P.W.2 was capable of issuing Ex.A.3, which is a certified true copy obtained from the Copying Department of the District Court. Perhaps, it was filed in the calender case by the concerned police before the learned Judicial Magistrate of First Class concerned. Be that as it may, the copy of the charge would disclose that the offence under Section 338 I.P.C. was clutched against the jeep driver, which was marked as Ex.A.2. So, keeping in view, first injury being grievous injury, a sum of Rs.25,000/- is awarded towards pain and suffering, extra nourishment and loss of temporary earnings together. So far as the simple injury is concerned, which is shown as second injury, a sum of Rs.3,000/- is granted.

12. Thus, the petitioner is entitled to a total sum of Rs.28,000/- (Rupees twenty eight thousand) as against Rs.4,000/- granted by the Tribunal, towards compensation and the same is accordingly granted, with interest at 7.5% per annum on the entire amount from the date of petition till realisation, as against 9% granted by the Tribunal, as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**.

13. Accordingly, the instant appeal is allowed in part modifying the order passed by the Tribunal, by enhancing the compensation and reducing the rate of interest, as indicated above, and confirming the same in all other respects. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

01st April, 2015

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