

**HON'BLE SRI JUSTICE A. SHANKAR
NARAYANA**

M.A.C.M.A. No.13 OF 2006

JUDGMENT:

Dissatisfied with the award of Rs.1,05,000/- (Rupees one lakh and five thousand) granted by the learned Chairman, Motor Accidents Claims Tribunal – cum – XIV Additional Chief Judge, City Civil Court, Hyderabad, (Fast Track Court) (for short 'the Tribunal'), by the order and decree, dated 03-09-2005, in O.P. No.432 of 2003, as against the claim of Rs.1,50,000/- (Rupees one lakh and fifty thousand) laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') and Rule 455 of the Andhra Pradesh Motor Vehicles Rules, 1989 (for short 'the Rules'), the instant appeal is preferred by the petitioner under Section 173 of the Act.

2. The appellant herein is petitioner in the O.P. before the Tribunal, while respondent Nos.2 and 3, who are owner and insurer of Tata Sumo bearing registration No.AP 28V 2021, respectively, are respondent Nos.2 and 3, respectively, and respondent No.1, who is owner of truck bearing registration No.ADT 4967, is respondent No.1.

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 facts, in brief, are that on 09-01-2003, the petitioner along with another, was travelling in a Tata Sumo bearing registration No.AP 28V 2021 owned by the 2nd respondent and insured with the 3rd respondent from Hyderabad to Sabari, Kerala

State on pilgrimage to Lord Swamy Ayyappa Temple and when it reached outskirts of Mudireddipalli village, a truck bearing registration No.ADT 4967 belonging to the 1st respondent coming from Jadcherla driven by its driver in a rash and negligent manner, hit the Tata Sumo, due to which, the petitioner sustained injuries along with others. According to the petitioner, he was admitted in Nizams Institute of Medical Sciences (NIMS) Hospital, Hyderabad, wherein he took treatment as in-patient and spent Rs.50,000/- towards treatment. He was 35 years old, doing tent house business in the name and style 'M/s Mohan Tent House and earning Rs.5,000/- per month from it. Therefore, he sought to grant the aforesaid total sum quantifying it under relevant heads, claiming that he has been suffering continuous and permanent disability.

5. The Tribunal has disposed of the present O.P. along with another O.P. No.432 of 2003 by common order, wherein the claim was for the death of one of the inmates of the Tata Sumo in the same accident.

6. Respondent No.1 filed similar counters in both petitions opposing the claims. 2nd respondent also opposed the claim. Even, the 3rd respondent filed similar counters opposing the claims, attributing rash and negligent driving to the truck.

7. Based on the pleadings, the Tribunal framed three identical issues in both the Ops and taken up for discussion separately. During inquiry, common evidence was let in by the respective parties in both the petitions. Besides the petitioner examining himself as PW.2, also examined PWs.1 and 3 and Exs.A-1 to A-20 were marked and DWS.1 to 4 were examined

Exs.B-1 and B-2 were marked on behalf of the respondents.

8. So far as issue No.2 is concerned, the Tribunal having held issue No.1 in favour of the petitioner, and basing on the evidence of PW.3 – Dr. R. Srikanth, Associate Professor, Department of Plastic Surgery in NIMS Hospital, granted a sum of Rs.5,000/- towards transport to hospital; a sum of Rs.20,000/- towards pain and suffering; a sum of Rs.19,000/- towards purchase of medicines; Rs.30,000/- towards temporary loss of earnings and, thus, a total sum of Rs.1,05,000/- was granted.

9. Not satisfied with the aforesaid compensation, the instant appeal is preferred by the petitioner on the ground that meager amount was granted.

10. Heard Sri M. Krishna Reddy, learned counsel for the appellant – petitioner and Sri N. Parameshwara Reddy, learned counsel for the 3rd respondent. Though, the 1st and 2nd respondents served with notice, none appears for them.

11. Perused the order and the evidence on record let in by the petitioners. The evidence of PW.3 makes it abundantly clear that the petitioner suffered fractures of mandible and maxilla and fracture of distal end of fore arm bones, that himself along with his team operated the petitioner on 16-01-2003 and fracture was reduced and fixed with plates and screws, and that the screws and plates shall remain in the patient. The petitioner can open his mouth adequately and he was advised liquid diet for some time and he may have discomfort in eating hot or cold substances. Of course, nothing was brought out in his cross-examination, however, it was admitted by PW.3 in his cross-examination that

the petitioner did not suffer any physical disability, and it has also come up in his evidence that the petitioner jaw should be alright after six months of the operation and it was nothing to do with day to day work to be performed by him. However, the petitioner does not require any other operation according to the evidence of PW.3. Thus, when kept in view, the evidence of PW.3, certainly, the amount of Rs.20,000/- granted by the Tribunal towards pain and suffering requires enhancement and, therefore, a sum of Rs.35,000/- is granted as against the amount of Rs.20,000/-. Towards extra nourishment, no amount was granted and, therefore, a sum of Rs.5,000/- is granted. Thus, the petitioner is entitled to a sum of Rs.20,000/- additionally. The remaining amounts of Rs.5,000/- towards transport to hospital; Rs.50,000/- towards medical expenses and Rs.30,000/- towards loss of temporary earnings granted by the Tribunal are maintained. In all, the petitioner is entitled to Rs.1,25,000/- as against the amount of Rs.1,05,000/- granted by the Tribunal as compensation. Concerning interest, the Tribunal granted it at 7.5% per annum and the same is maintained as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**^[1].

12. In the result, the appeal is allowed in part, and the order and decree, dated 03-09-2005, in O.P. No.616 of 2003, passed by the Tribunal are modified, enhancing the compensation to Rs.1,25,000/- (Rupees one lakh and twenty five thousand) from Rs.1,05,000/- (Rupees one lakh and five thousand) with interest thereon at 7.5% per annum from the date of petition till realization. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

March 20, 2015.
Mgr

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