

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.3507 of 2005

JUDGMENT:

Dissatisfied with the award of Rs.1,14,000/- as compensation by the order dated 18.08.2005 in M.V.O.P. No.232 of 2002 on the file of the learned Chairman, Motor Vehicles Accidents Claims Tribunal-cum-the Special Judge for the trial of offences under SCs & STs (POA) Act-cum-IV Additional Metropolitan Sessions Judge-cum-XX Additional Chief Judge, Secunderabad (for short 'the Tribunal') as against the claim of Rs.2,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988, the petitioners preferred the instant appeal.

2. The appellant herein is the petitioner, while the respondent Nos.1 and 2 herein, who are the owner and insurer of the jeep bearing registration No.AP7U 3314 respectively, were respondents in the original petition before the Tribunal.

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

4. The facts, in brief, are that on 17.08.2002 at about 5.30 P.M. while the petitioner was going on his scooter towards his residence on extreme left side of the road, near Kakatiya mess, the driver of jeep bearing registration No.AP7U 3314 driven in a rash and negligent manner came on wrong side and dashed the scooter from behind, due to which the petitioner sustained head injury, fracture to skull, multiple fractures of mandible and other bleeding injuries all over his person, he was shifted to Apollo Hospital and there he was treated as in patient and according to the petitioner, on account of the injuries he sustained he lost memory power, getting headache frequently and suffering with fits and unable to identify the persons properly and he was fed by tube and cannot eat hard food and lost his academic career, and, therefore, sought Rs.2,00,000/- as compensation.

5. Respondent No.1, owner of the jeep, having received notice did not appear and remained *ex parte*. Respondent No.2-insurance company opposed the claim raising various pleas and sought to dismiss the claim.

6. Based on the pleadings, the Tribunal framed four issues about the responsibility for the accident. During enquiry before the Tribunal, on behalf of the petitioner as he was minor on the date of filing the claim petition, the father of petitioner examined himself as P.W.1, besides examining one Dr. S.S.Murthy as P.W.2 and M.Annop Kumar as P.W.3 and marked exhibits A.1 to A.13. On behalf of respondent No.2, none were examined, but the copy of insurance policy was marked as Ex.B.1 on consent.

7. The Tribunal, on appreciation of evidence on record let in by the petitioner, held issue Nos.1 and 2 in favour of the petitioner. On issue No.3, as to determination of compensation the Tribunal having considered the evidence of P.W.2-Medical Officer, who treated the petitioner for fracture of skull, recorded a finding that the petitioner did not sustain any partial permanent disability and granted Rs.25,000/- towards pain and suffering, Rs.82,000/- towards medical expenses based on Ex.A.9, Rs.2,500/- towards attendant charges, Rs.4,000/- towards extra nourishment, Rs.500/- towards transportation charges, making a total sum of Rs.1,14,000/- was awarded as compensation with interest at 6% per annum from the date of petition till the date of realisation.

8. Seeking enhancement by way of granting balance amount, the petitioner sought to modify the aforesaid order contending in the grounds of appeal that the Tribunal has not discussed in detail about the grievous injuries sustained by the petitioner despite examining P.W.2, who has spoken about the inconvenience the petitioner had suffered and continued to suffer, and awarded a meager sum. It is also stated that the interest at 6% per annum on the compensation awarded by the Tribunal is also on lower side, and, therefore, sought to enhance the balance amount.

9. Heard Sri C.Vikram Chandra, learned counsel for the appellant, and Sri T.Ramulu, learned counsel for respondent No.2. The appeal was dismissed against respondent No.1 for default by order dated 06.01.2012. Since respondent No.1 remained *ex parte* before the Tribunal and suffered a decree, his absence would not make any difference in view of the decision of this Court in ***Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others.***

10. The evidence of P.W.2 and Ex.A.5 issued from the Apollo Hospitals

Enterprise Limited, Hyderabad, has significance in the context of determining compensation by examining the injuries sustained by the petitioner and the inconvenience suffered by him. The nature of injuries recorded in Ex.A.5 would reflect that the petitioner sustained compound head injury and on exploration it was found that there was ORIF fracture mandible with IMF debridement and repair laceration left pinna left jaw line interdental wing for support. The consultant was none other than P.W.2. Further, relevant details are to be found in Ex.A.5, which are, of course, unnecessary to record as it would suffice to refer to the evidence of P.W.2.

11. P.W.2's evidence shows that the petitioner was having compound head injury showing fracture base skull and fracture of mandible plus and also injury to right ear. Initially, the petitioner was treated with medicines and he was operated on 17.08.2002 for compound head injury and on 19.08.2002 he was operated for the fracture of mandible and was discharged on 02.09.2002, having been admitted on 17.08.2002. He has referred to the documents issued by the Apollo Hospital. Further, he has given an opinion that the petitioner may develop mental sequelae (Mental-disturbance), difficulty in swallowing, speaking, chewing and pains and it may continue throughout his life and depending upon his problems he may require medicines. In his cross-examination, he admits that the C.T. scan of petitioner's brain shows normal and the compound head injury repair surgery conducted by him was successful. It has been the evidence of P.W.2 as to the treatment given to petitioner. The Tribunal of course, recorded a finding that the petitioner has not sustained any partial permanent disability in view of the admissions made by P.W.2 in his cross-examination to the effect that the C.T. scan-Exhibit A.6, discloses the normal study of brain, and, therefore, the finding recorded by Tribunal since based on the evidence of P.W.2 is well reasoned and well appreciated, does not warrant interference. So, the compensation granted by the Tribunal towards pain and suffering based on the injuries sustained by petitioner requires advertence in deciding whether it was just and adequate or otherwise. It is clear from the evidence of P.Ws 2 and 3 and the medical records that the petitioner has undergone two surgical interventions on 17.08.2002 and 19.08.2002 for compound head injury and fracture of mandible respectively. Kept in view the fact that the petitioner undergone two surgical

interventions and the sufferance he had undergone subsequent thereto for a considerable period, the amount of Rs.25,000/- granted by the Tribunal appears to be on lower side. Therefore, the same is enhanced to Rs.60,000/- as the petitioner to get normalcy. The Tribunal granted Rs.82,000/- towards medical expenses based on Ex.A.9-final bill issued by the Apollo Hospital. The same is maintained. The Tribunal has granted Rs.2,500/- towards attendant charges, for 18 days as he was treated as in patient, which requires enhancement. Therefore, a sum of Rs.10,000/- is granted towards attendant charges as against Rs.2,500/- granted by the Tribunal. The amount of Rs.4,000/- granted by the Tribunal towards extra nourishment is enhanced to Rs.10,000/-. The amount of Rs.500/- granted by the Tribunal towards transportation charges is also enhanced to Rs.2,000/-. The petitioner is thus, entitled to a total compensation of Rs.1,64,000/-. The Tribunal granted interest at 6% per annum. The same is also enhanced to 7.5% per annum as per the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**.

12. In the result, the appeal is allowed in part, and the award and decree dated 18.08.2005 passed by the Tribunal in M.V.O.P.No.232 of 2002 is modified, enhancing the compensation from Rs.1,14,000/- to Rs.1,64,000/- (Rupees One lakh and sixty four thousand only), with interest at the rate of 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

Date: **09.04.2015**

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Dt. 09.04.2015

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