

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.572 of 2006

JUDGMENT:

Dissatisfied with the award of compensation in O.P.No.166 of 2002, on the file of the learned Chairman, Motor Vehicles Accidents Claims Tribunal-cum-II Additional District Judge, Nizamabad, by order dated 31.05.2005, whereby and whereunder, the Tribunal granted a sum of Rs.2,000/- towards compensation for the injury said to have sustained to the petitioner in a jeep accident, as against the claim for Rs.2,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988, read with Rule 455 of the A.P. Motor Vehicles Rules, 1989, the instant appeal is preferred by the petitioner seeking enhancement of compensation.

2. In the Original Petition before the Tribunal, the appellant herein is the petitioner, while the respondent Nos.1 and 2, who are owner and insurer respectively of the jeep bearing registration No.AP-1-C-4284, are respondent Nos.1 and 2.

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 31.10.2001, the petitioner along with ten other passengers boarded a jeep bearing registration No.AP-1-C-4284 at Modhole for proceeding to Nizamabad, and when the said jeep reached the outskirts of Mittapoor village at about 10.30 A.M., the driver of said jeep driven it in a rash and negligent manner on the B.T. road connecting Modhole and Nizamabad, and since he lost control over the jeep, it dashed against a tree and fell down, resulting in injuries to the passengers including the petitioner herein. According to the petitioner, she sustained injuries on her legs and other parts of her person, which are grievous in nature. She was initially admitted in the Government Hospital, Nizamabad, and immediately thereafter, she was admitted in a private hospital for further treatment and spent Rs.50,000/- towards medical expenses, Rs.10,000/- towards extra nourishment, sought Rs.2,00,000/- as compensation.

5. Respondent No.1, owner of the jeep, remained *ex parte*. Respondent No.2

opposed the claim requiring the petitioner to prove all material allegations mentioned in the claim petition while reserving its right to put forth the defense under relevant provisions of the Act.

6. Based on the pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry before the Tribunal, the petitioner, besides examining herself as P.W.1, examined Dr. T.Narsing Rao as P.W.2 and marked Exs.A.1 to A.4 and Ex.C.1-Disability Certificate, issued by P.W.2. On behalf of respondent No.2, one of its officials from Local Branch was examined as R.W.1 and marked the copy of insurance policy as Ex.B.1.

7 . On appraisal of evidence let in by the petitioner and supported by documentary evidence viz., Exs.A.1 and A.2, which are certified copies of F.I.R and Charge Sheet respectively, the Tribunal held issue No.1 in favour of the petitioner. On issue No.2, the Tribunal seriously commenting upon the evidence of P.W.2, the Doctor, who issued Ex.C.1-Disability Certificate, making observations in paragraph Nos.11 to 13, disbelieved the evidence of P.W.2 and discarded Ex.C.1. The Tribunal, having considered the evidence on record, arrived at the conclusion that the petitioner sustained a simple injury but not grievous injury, and granted Rs.2,000/- as compensation with interest at 9% per annum from the date of petition till realization.

8. The said order, which is under challenge in the instant appeal, contending in the grounds of appeal that the Tribunal, vitiated in appreciating the evidence of P.W.2, contents of Ex.C.1 and contents of Ex.A.3 despite the fact that P.W.2 was made his assessment on disability at 50% partial permanent in nature, treated the injury as simple and granted Rs.2,000/- as compensation, and, therefore, sought to grant the balance amount.

9. Heard Sri M.Rajamalla Reddy, learned counsel for the petitioner (appellant). Since respondent No.1 refused to receive the notice, notice deemed to have been served. On behalf of respondent No.2-insurance company, there is no representation.

10. Perused the order and evidence on record. The observations of the Tribunal contained in paragraph Nos.13 to 15, basing on which a finding has been recorded by the Tribunal, having discussed the contents of Ex.A.3, contents of

Ex.C.1 and the disability fixed by P.W.2 at 50%, are all based on proper appreciation of evidence on record, more particularly, the evidence of P.W.2 in his cross examination, having found the version of P.W.1 is totally inconsistent regarding her admission in the Government Hospital and her treatment as in-patient for one day in that hospital, do not suffer from any legal infirmity, warranting any interference. Even looking at the evidence of P.W.2, the Medical Officer, who issued Ex.C.1, it shows that he made definite admissions in his cross-examination, which would contradict the assertions he made in his chief-examination as to percentage of disability assessed by him. Though, he states that there was malunated fracture of both bones of right leg and assessed 50% disability, issued Disability Certificate and marked the certificate as Ex.C.1, but in his cross-examination he makes positive admissions that he is not maintaining any register regarding issue of disability certificate, that he has not obtained 'X-ray' before issuing Ex.C.1, that the said injuries were possible other than road traffic accident, that with the physiotherapy treatment there is a possibility of reduction in percentage of disability to the extent of 5% to 10%, that P.W.1 was not present on the day when he deposed before the Tribunal, that he has not treated P.W.1 in his clinic, that there is a Medical Board in Nizamabad District Headquarters Hospital, that he is not a member of the said Board, that he issued Ex.C.1 in his personal capacity and the percentage of disability mentioned in Ex.C.1 is not specified for each fracture, that the assessment of percentage of disability is only based on clinical and physical examination, but not by scientific yard/stick. When such positive admissions are made by him in his cross-examination, certainly, viewing Ex.C.1 with suspicion by the Tribunal cannot be faulted. Viewed from that angle, the finding of Tribunal, in rejecting Ex.C.1 and the disability as well as the grievous nature of injury, also cannot be faulted with. When Ex.A.3 is perused, it shows the endorsement of the concerned Station House Officer that the case of petitioner was referred to the Government Hospital for examining the injuries and issuance of medical certificate showing the date as 31.10.2001. The Doctor-P.W.2 herein has signed but not put the date, but he only put the date under the column touching the 'nature of injuries' whether simple or grievous that too there being no reference to 'X-ray' report at all. In fact, when the opinion as to nature of injuries given by the Doctor, necessarily there must be reference to 'X-ray' report referring the patient to the concerned Radiologist; such an

endorsement is not to be found at all. In fact, according to his evidence in his chief examination, he has been practicing as Orthopedic Surgeon since 1992. He does not positively assert in his chief examination that he has issued Ex.A.3. The Tribunal, for the above said reasons, felt that there is no legally acceptable evidence to arrive at a definite finding that the petitioner sustained grievous injury even. However, concerning the award of compensation at Rs.2,000/- granted by the Tribunal appears to be on lower side. Hence, a sum of Rs.6,000/- is granted as compensation. The petitioner is thus, entitled to a compensation of Rs.6,000/-. The Tribunal has granted interest at 9% per annum. The said rate of interest is reduced to 7.5% per annum as per the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**.

11. In the result, the appeal is partly allowed, and the award and decree dated 31.05.2005 passed by the Tribunal in O.P.No.166 of 2002 is modified, enhancing the compensation from Rs.2,000/- to Rs.6,000/- (Rupees Six 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.

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

A. SHANKAR NARAYANA, J

Date: **13.04.2015**

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Dt. 13.04.2015

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