

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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M.A.C.M.A. No.896 of 2005

JUDGMENT:

Dissatisfied with the amount of Rs.1,30,000/- granted as compensation by the order dated 02.02.2005 in M.O.P.No.512 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Vizianagaram (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') for the injuries sustained by the petitioner, a boy aged 15 years prosecuting 10th Class, in a road accident, the instant appeal is preferred.

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 are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts in brief are that on 15.11.2002, the petitioner was going to his school on foot and when he reached near Z.P.High School, Kothavalasa, a lorry bearing registration No.AP 31V 51 coming in opposite direction driven in a rash and negligent manner at high speed dashed him, resulting in injuries to him. He was immediately shifted to the Government Hospital, Vizianagaram, and from there, he was referred to K.G.H., Visakhapatnam for better treatment. Therefore, the petitioner laid the claim against respondent Nos.1 and 2, who are the owner and insurer of the accident lorry.

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

6. Basing on the said pleadings, the Tribunal framed four issues about the responsibility for the accident. During enquiry, the petitioner examined himself as P.W.1 besides examining Dr. M.Venkateswara Rao as P.W.2 and marked Exs.A.1 to A.9 and Ex.X.1 by summoning the same and marking it through P.W.2; whereas, on

behalf of respondent No.2, no witnesses were examined, but 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 parties, held issue No.1 in favour of the petitioner. On issue No.2, the Tribunal basing on the evidence of P.W.2 and finding that the petitioner sustained a big lacerated injury on the right forearm with distal radial fracture epiphyses united in mal position, presence of deformity and disfigurement of right forearm and the movements of right wrist joint was limited, movements of right forearm were limited and that the petitioner cannot also lift weights with his right hand and by looking at photograph marked as Ex.A.7 and taking into consideration that the disfiguration amounts to permanent disability and the same affecting his future prospects, granted Rs.1,00,000/- as compensation towards permanent disability, Rs.5,000/- towards pain and suffering and Rs.25,000/- towards medical, transportation and extra nourishment expenses, and, thus, a total sum of Rs.1,30,000/- was granted with interest at 9% per annum.

9. Dissatisfied with the aforesaid order, the instant appeal is preferred by the petitioner seeking enhancement of compensation on the ground that the Tribunal did not properly appreciate the evidence on record and awarding Rs.25,000/- towards medical expenses, transport charges and extra nourishment is too meager and even Rs.5,000/- towards pain and suffering is on lower side, and, therefore, sought to grant balance amount of compensation.

10. Heard Smt. Shanti Neelam, learned counsel for the appellant. No representation for the 2nd respondent-Insurance Company, though, learned Standing Counsel was appointed for representing it. Though the 1st respondent was served with notice, none appears for him.

11. Perused the order under challenge and the evidence of P.Ws.1 and 2 and the documentary evidence through Ex.A.2-wound certificate, Ex.A.6-discharge summary, Ex.A.9-disability certificate issued by P.W.2 and Ex.X.1 case sheet.

12. The evidence of P.W.2 is material. His evidence, coupled with Exs.A.2 and A.6, would reflect that the petitioner sustained one grievous injury and was treated as an inpatient from 15.11.2002 to 28.12.2002 and that the petitioner sustained fracture distal radial epiphysis with darso lateral displacement and he was referred to Plastic

Surgeon for skin grafting which was also done, and, thus, the evidence of P.W.2 would make it clear that the petitioner sustained lacerated injury of right forearm with distal fracture epiphyses united in mal position with the presence of deformity and even disfigurement of right forearm and the doctor opining that the petitioner cannot lift weights with his right hand and the petitioner also cannot write with right hand properly and he lost his grip over. Thus, it is a case where the disability cannot be excluded as rightly observed by the Tribunal. Keeping in view, the disfigurement which has got impact on his future prospects even, it is desirable to enhance the amount of Rs.1,00,000/- granted towards permanent disability to Rs.1,25,000/-. When kept in view, the nature of injuries sustained by the petitioner, more particularly, when he is not an earning member but a student prosecuting 10th Class, the amount of Rs.5,000/- awarded towards pain and suffering, is enhanced to Rs.20,000/-. The Tribunal has granted Rs.25,000/- towards medical expenses, transport charges and extra nourishment and the same is maintained, as the said amount is just and adequate.

13. The learned counsel for the appellant placed reliance on a judgment of the Hon'ble Supreme Court in **Raj Kumar vs. Ajay Kumar and another** for the purpose of seeking enhancement in the instant appeal. It was a case where the petitioner-injured was 25 years old eking out his livelihood and he was an earning member; whereas, in the instant case, the petitioner was a student and prosecuting 10th Class and not an earning member. The learned counsel is unable to explain as to the purpose for which the decision has been relied on.

14. Thus, the petitioner is entitled to a total sum of Rs.1,70,000/- (Rupees one lakh and seventy thousand) as against Rs.1,30,000/- 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**.

15. Accordingly, the instant appeal is allowed in part modifying the order under challenge 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.

16. As a sequel thereto, miscellaneous applications, if any pending in the instant

appeal, stand disposed of.

A. SHANKAR NARAYANA, J

12th March, 2015

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