

THE HON'BLE SMT. JUSTICE ANIS

M.A.C.M.A.No.1292 of 2005

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JUDGMENT

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the award dated 15.04.2005 passed in O.P.No.358 of 2002 by the learned IV Additional District and Sessions Judge, Fast Track Court, Ranga Reddy District at L.B.Nagar, awarding compensation of Rs.78,000/- for the injuries sustained by the petitioner in a motor vehicle accident.

2. The appellant/petitioner filed the above Original Petition under Section 166 of the Act claiming compensation of Rs.1,00,000/- on account of the injuries sustained by him in a motor vehicle accident that occurred on 09.06.2011.

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 09.06.2001 at about 11.30 AM., while the petitioner was proceeding on a cycle as a pillion rider from Moosapet towards main road and when he reached near Moosapet Village, a lorry bearing No.ADM 7187 came in the same direction in high speed and in a rash and negligent manner and dashed against the petitioner's cycle from his behind, thereby the petitioner and other person fell down and sustained grievous injuries. Immediately, the petitioner was shifted to Osmania General Hospital, Hyderabad, wherein he was treated as inpatient from 09.06.2001 to 13.08.2001 and an operation was also conducted on 09.06.2001. Due to the accident, the petitioner

sustained grievous injuries resulting disfiguration and also suffered from permanent disability and he was also bed ridden. Hence, he prayed the Court to grant a compensation of Rs.1,00,000/- along with interest payable by respondents 1 and 2, who are the owner and insurer of the crime vehicle, jointly and severally.

5. The first respondent remained *ex parte*. The 2nd respondent filed counter stating that the petitioner has to prove the manner of accident, his age and income at the time of accident. He has to prove that the driver of the crime vehicle was having valid driving licence at the time of accident. This respondent denied the injuries sustained by the petitioner and also his treatment in various hospitals. It is stated that he was not aware of criminal proceedings launched against the driver of the lorry and finally, stated that the compensation claimed by the petitioner is highly excessive and prayed the Court to dismiss the petition.

6. Basing on the above pleadings, the Tribunal framed three issues. To substantiate the claim, the petitioner himself was examined as P.W.2 and also examined P.Ws.1 and 3 and marked Exs.A1 to A7 and also Exs.C1 and C2. . No evidence was adduced on behalf of the respondents, but Ex.P1-Copy of Policy was marked.

7. The Tribunal, after considering the evidence on record, held that the accident occurred due to rash and negligent driving of the driver of lorry bearing No.ADM 7187, due to which, the petitioner sustained injuries and awarded compensation of Rs.78,000/- with interest at 9% per annum from the date of the petition i.e., 23.04.2002 till the date of payment payable by respondents 1 and 2 jointly and severally with proportionate costs. Dissatisfied with the quantum of compensation awarded by the Tribunal, the present

appeal is preferred.

8. Learned counsel for the appellant argued that because of the accident, the petitioner sustained grievous injuries and he was treated as inpatient for about three months and also taken treatment in various hospitals by spending an amount of Rs.1,00,000/-. He further argued that the Tribunal though awarded compensation for all the heads not awarded any compensation for the grievous injuries sustained by the petitioner. Therefore, he prayed the Court to enhance the compensation.

9. On the other hand, learned Standing Counsel for the 2nd respondent insurance company argued that the Tribunal after considering the oral and documentary evidence has rightly awarded compensation and such finding of the Tribunal need not be interfered with by this Court and prayed the Court to dismiss the appeal.

10. Having regard to the submissions made by the learned counsel for both the parties, the points that arise for consideration are:

1. Whether the compensation awarded by the Tribunal is just and reasonable?
2. Whether the appellant is entitled for enhancement of compensation?

11. **Points 1 and 2:**

A perusal of the evidence of P.W.2 coupled with Exs.A1 and A3-copies of FIR and charge sheet would show that the accident occurred due to rash and negligent driving of the driver of lorry bearing No.ADM 7187 resulting grievous injuries to the petitioner.

12. Insofar as the enhancement of compensation is concerned, P.W.2 stated that he sustained three grievous injuries in the accident and he has undergone major operations and was treated as inpatient for about three months. A perusal of the record shows that the Tribunal granted compensation for all the heads in favour of the petitioner except the head of injuries. P.W.2 in his evidence has clearly stated that he received injuries in the accident and admitted in Osmania General Hospital and took treatment for three months by spending huge amounts. The evidence of P.W.2 was corroborated with the evidence of P.W.3-Doctor, who treated the petitioner in Osmania General Hospital. According to him, on 09.06.2001, P.W.2 was admitted in the hospital with crush injury on right thigh with injury to right femoral artery and vein under care of cardio thoracic surgeon, X-rays were taken, which revealed fracture of pelvis and repair of the vascular injury was performed by Cardio Thoracic Surgeon and later, the case was transferred to Orthopaedic Ward for the rest of the treatment. P.W.3 also stated that skin grafting was done for the right thigh wound on 24.07.2001 and the petitioner was discharged from the hospital on 13.08.2001 with follow up treatment and again P.W.2 was admitted in hospital on 03.11.2001 for flexion contracture of right knee and was treated with pin traction and was discharged on 26.11.2001. Through P.W.3, Exs.C1 and C2-case sheets were marked. A perusal of the evidence of P.W.2 coupled with the evidence of P.W.3, it is proved that the petitioner sustained grievous injuries and he was hospitalised for a considerable period and the Tribunal has not awarded any compensation for the said injuries sustained by him, Therefore, considering the evidence on record, the petitioner is entitled to a compensation of Rs.20,000/-for the injuries sustained

by him in the accident. Accordingly, the compensation awarded by the Tribunal is enhanced from Rs.78,000/- to Rs.98,000/-.

13. As far as the rate of interest is concerned, in view of the different rate of interests granted by the Hon'ble Supreme Court in the decisions reported in ***Sanobanu Nazirbhai Mirza and others v. Ahmedabad Municipal Transport Service***^[1] and ***Rebeka Minz and others v. Divisional Manager, United India Insurance Company Limited and another***^[2], I am of the view that interest at 7.5% p.a. shall be awarded on the enhanced amount from the date of appeal till the date of realisation.

14. In view of the above discussion, the appeal is partly allowed enhancing the compensation awarded by the Tribunal to the appellant/petitioner from Rs.78,000/- to Rs.98,000/- along with interest at 7.5% p.a. on the enhanced amount from the date of appeal till the date of realisation. No order as to costs.

15. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

ANIS, J

4th September, 2015
sj

^[1] 2013 ACJ 2733

[\[2\]](#) 2012 ACJ 2328