

HON'BLE SMT JUSTICE ANIS

M.A.C.M.A. No.1394 OF 2005

J U D G M E N T:

This appeal is filed by the appellant/ petitioner under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the order and decree dated 03.03.2005, passed by the Chairman, Motor Accident Claims Tribunal-cum-VII Additional District Judge, (FTC), Nizamabad at Bodhan, in M.V.O.P. No.1609 of 2005, awarding compensation of Rs.4,000/-.

02. The appellant/ petitioner filed the above Original Petition under Section 166 of the Act claiming compensation of Rs.2,00,000/- on account of the injuries sustained by the son of the petitioner, in a motor vehicle accident that occurred on 23.08.2001. The injured is a minor, hence he was represented by his father.

03. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the Original Petition.

04. The brief averments made in the petition are that on 23.08.2001 at about 12.30 P.M. the petitioner was going on the side of the road from his school to his house in Rudrur and when he reached in front of Bus stand Rudrur, Suzuki Motor cycle bearing No. AP 25 G 4492 driven in a rash and negligent manner and at high speed came from opposite direction and on wrong side of the road and dashed against the petitioner, due to which petitioner received grievous and simple injuries. He was admitted in Aditya Nursing Home, Nizamabad, there he was treated by Dr. Srinivas, Orthopedic Surgeon. He spent an amount of Rs.1,000/- for treatment. Petitioner further stated that due to said injuries, he

got permanent disability and he is unable to move from the bed. Hence, he filed claim petition against the respondents.

05. Before the Tribunal, the first respondent remained *ex parte*.

06. The second respondent appeared through its counsel and filed counter, denying the material allegations made in the claim petition. The brief averments made in the counter are as follows:

07. The second respondent put the petitioner to prove the manner of accident, age and income of the injured and specifically pleaded that the compensation claimed by the petitioner is high and excessive, and prayed the Court to dismiss the petition.

08. Basing on the above pleadings, the Tribunal framed three issues and to substantiate his claim, on his behalf, the petitioner himself got examined PW.1 and the doctor who issued Ex.A.8 was examined as P.W.2 and got marked Exs.A.1 to A.8. On behalf of the contesting respondent, no oral or documentary evidence was adduced.

09. After considering the oral and documentary evidence, the Tribunal held that the accident occurred due to rash and negligent driving of the rider of Suzuki Motor Cycle bearing No.AP 25 G 4492, due to which the petitioner sustained injuries and awarded compensation of Rs.4,000/- along with interest at 9% p.a. to the petitioner against both the respondents.

10. Being not satisfied with the compensation awarded by the Tribunal, the petitioner preferred the present appeal.

11. The learned counsel appearing for the appellant/

petitioner argued that the Tribunal has not considered the documentary evidence adduced by the petitioner i.e. Ex.A.3 is wound certificate issued by Aditya Nursing Home wherein it is clearly mentioned that the petitioner sustained one grievous injury and one simple injury and further the tribunal granted only meagre amount of Rs.4,000/- though the petitioner suffered one grievous and one simple injury and prayed to enhance the compensation amount.

12. On the other hand, learned counsel for the second respondent argued that the tribunal after considering the evidence of P.Ws.1 and 2 rightly awarded that the petitioner is entitled to an amount of Rs.4,000/- towards compensation and the said finding of the tribunal needs no interference and prayed to dismiss the appeal.

13. Having regard to the submissions made by the learned counsel appearing for both the parties, the points which are to be decided in this appeal are as follows:

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

POINTS:

14. A perusal of the record shows that there is no dispute of the fact that on 23.08.2001 due to the rash and negligent driving of the rider of the Suzuki Motor Cycle bearing No.AP 25 G 4492, the accident occurred in which the petitioner sustained grievous injuries. Therefore, the said finding of the Tribunal needs no interference.

15. Now coming to the quantum of compensation, the tribunal held that the evidence of P.W.2 cannot be taken into consideration in view of the judgment of this Court in Appeal Against Order No.3518 of 2004 and granted compensation of Rs.4,000/- in lump sum. The injured himself was examined as P.W.1 and narrated that he sustained injuries one grievous injury and one simple injury and filed Ex.A.3.

16. In view of the judgment of this Court in A.A.O. No. 3518 of 2004, the evidence of P.W.2 and Ex.A.8 cannot be accepted. The independent evidence of P.W.1 coupled with Ex.A.3 proved that the petitioner sustained one grievous injury and one simple injury only. Having regard to the nature of the injuries sustained by the petitioner, he is entitled to enhancement of compensation Rs.4,000/- to Rs.10,000/-.

17. 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 Limited 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.

18. In view of the above discussion, the appeal is partly allowed enhancing the compensation awarded by the Tribunal to the appellant/ petitioner from Rs.4,000/- to Rs.10,000/- 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.

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

ANIS, J

Date: 21.09.2015
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[\[1\]](#) 2013 ACJ 2733

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