

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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M.A.C.M.A. No.622 of 2005

JUDGMENT:

The National Insurance Company Limited-2nd respondent in O.P.No.502 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-IX Additional Chief Judge (Fast Track Court), City Civil Court, Hyderabad (for short, 'the Tribunal'), preferred the instant appeal challenging the award and decree dated 15.10.2004, whereby and whereunder the Tribunal granted a sum of Rs.59,750/- with interest at 9% per annum.

2. The 1st respondent herein is the petitioner, while the 2nd respondent herein and the appellant, 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 the petitioner was travelling in his Maruthi car bearing registration No.AP 9F 2292 driven by his driver from Karimnagar to Secunderabad and when the car reached Burugu Bhavan on 26/27.04.1996 at about 2-00 a.m., a lorry bearing registration No.ATS 9589 came in opposite direction and the accident took place resulting injuries to the petitioner who was shifted to Gandhi Hospital, where he was treated for 7 days as an inpatient. A crime was also registered against the driver of the lorry by the concerned police. The petitioner claiming that he was earning Rs.5,000/- as stamp vendor and for two months, he could not attend the duties and lost income of Rs.10,000/- and he sustained head injury, sought Rs.1,00,000/- against the respondent Nos.1 and 2, who are the owner

and insurer of the accident vehicle, by laying claim under Section 166 r/w Section 140 of the Motor Vehicles Act, 1988 (for short, 'the Act') and the Rules framed thereunder.

5. Before the Tribunal, the 1st respondent filed counter. While denying the facts stated in the petition, he contended that since the policy was in force by the date of accident, the 2nd respondent may be directed to pay compensation to the petitioner. Besides the same, he contended that in the same accident, another person sustained injuries and filed O.P.No.920 of 1999 before the Chief Judge and the same was settled before the Lok Adalat for Rs.78,000/-. The 2nd respondent filed counter resisting the claim and however sought to dismiss the claim by raising various pleas.

6. Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry before the Tribunal, the petitioner examined himself as P.W.1 besides marking Exs.A.1 to A.9; but the respondents have not chosen to examine any witnesses and no documents were filed.

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 Exs.A.4 and A.5 medical certificates and Ex.A.3 discharge certificate issued by Gandhi Hospital, noting the description of injuries at page-4 of the order while dealing with various amounts under relevant heads, accordingly, granted Rs.3,750/- towards loss of income taking the income at Rs.1,250/- per month as against Rs.5,000/- per month as claimed by the petitioner, Rs.1,000/- towards transport charges to the hospital, Rs.4,000/- towards extra nourishment, Rs.1,000/- towards purchase of medicines, Rs.25,000/- towards permanent disability and Rs.25,000/- towards pain and suffering, and, thus, a total sum of Rs.59,750/- was

granted with interest at 9% per annum.

8. Aggrieved of the aforesaid order, the Insurance Company preferred the instant appeal contending in the grounds of appeal that without there being any acceptable evidence, the Tribunal granted Rs.25,000/- towards permanent disability, and, therefore, sought to reduce the compensation.

9. Heard Smt. S.N.Padmini, learned counsel for the appellant-Insurance Company. None appears for the 1st respondent-claimant. No representation on behalf of the 2nd respondent-owner of the accident vehicle.

10. The learned counsel for the appellant contended that the Tribunal without there being any legally acceptable evidence on record, granted Rs.25,000/- towards permanent disability and Rs.25,000/- towards pain and suffering, by deviating in appreciation of evidence on record, and, therefore, sought to reduce the compensation.

11. Perused the order under challenge and the evidence on record, both, oral and documentary adduced by the parties. Twin grounds are taken by the appellant, first being that the amount granted by the Tribunal is excessive and second, that the Tribunal did not properly appreciate the evidence on record in arriving at the finding on issue No.1. A perusal of the order would show that not only the evidence of P.W.1 but also the contents of Exs.A.1 and A.6, which are certified copies of F.I.R. and charge sheet, would reflect that the driver of the lorry clutched for the offences under Sections 337 and 338 of I.P.C., and, therefore, rash and negligent driving can only be attributed to the driver of the lorry, but not the driver of the Maruthi car. This apart, the finding tendered by the Tribunal on issue No.1 cannot be faulted with

in view of the observation that the rough sketch annexed to the charge sheet-Ex.A.6 would clearly show that the Maruthi car was on the left side of the road and the lorry was in the middle of the road and the skid marks noted by the investigating officer clarify the speed of the lorry at the time of the accident. Therefore, the contention of the learned counsel for the appellant-Insurance Company, that the Tribunal did not properly appreciate the evidence on record, has no merit.

12. Concerning the compensation granted by the Tribunal, looking from any angle, it cannot be said that the compensation awarded by the Tribunal is excessive and arbitrary. There has been loss of teeth, which caused permanent disability. The description of seventh injury would show that the loss of left lateral incisors and loosening of central incisors and cavities teeth, and, therefore, it cannot be said that the amounts of Rs.25,000/- towards permanent disability and Rs.25,000/- towards pain and suffering granted by the Tribunal are excessive. Therefore, there is no need to reduce the same. However, concerning the interest, the petitioner is entitled to 7.5% per annum only as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**^[1]. Therefore, to the extent of reducing the interest from 9% to 7.5%, the award and decree dated 15.10.2004 passed by the Tribunal in O.P.No.502 of 2002 is modified and in all other respects the same is confirmed.

13. Accordingly, the instant appeal is partly allowed as indicated above. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

23rd February, 2015

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