

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

MACMA No. 1072 of 2005

Judgment:

Having got dissatisfied with the amount of Rs.80,000/- granted by the Tribunal as compensation by the order, dated 23.02.2005, in MVOP No.710 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Vijayawada (for short 'the Tribunal'), as against the claim of Rs.5,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), the instant appeal is preferred seeking enhancement of compensation under Section 173 of the Act.

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the Original Petition before the Tribunal.

3. The facts, in brief, are that on 29.04.2003 at about 1.15 hours, when the petitioner was proceeding on his scooter at Vijayawada and reached near police control room, an RTC bus bearing registration No.AP-10Z-8227, driven by its driver in a rash and negligent manner at high speed, came and dashed his scooter, due to which he fell down and sustained grievous injuries. Even the concerned Station House Officer registered a case in Crime No.104 of 2003 against the driver of the RTC bus. According to him, he was disabled and unable to undertake contract works and, therefore, sought compensation of Rs.5,00,000/- against the respondent – Corporation.

4. The respondent – Corporation filed counter opposing the claim attributing rash and negligent driving on the part of the petitioner himself and, therefore, sought to dismiss the claim petition.

5. Basing on the said pleadings, the Tribunal framed three issues in order to fix the responsibility for the accident. During enquiry, the petitioner besides examining himself as PW.1 also examined Dr. M. Narendra Kumar as PW.3 and another witness as PW.2 and marked Exs.A1 to A17. On behalf of the respondent – Corporation, the driver of the RTC bus was examined as RW.1 and no documents were filed.

6. The Tribunal has taken up common discussion for issues 1 and 2. On issue No.1, the Tribunal, basing on the evidence of PWs.1 and 2 and RW.1 supported by Ex.A1 – certified copy of FIR, which reflects that the crime was registered against the driver of the RTC bus, held it in favour of the petitioner. On issue No.2, placing reliance on the evidence of PW.3 – Medical Officer and also the surgical interventions undergone by the petitioner on 29.04.2003 and both the injuries being grievous in nature, granted a sum of Rs.20,000/- each and, basing on Ex.A13 – bunch of medical bills to a tune of Rs.45,000/-, by restricting it to Rs.40,000/- granted the same. Thus, a total sum of Rs.80,000/- was granted by the Tribunal with 9% p.a., interest thereon.

7. It is the aforementioned order which is under challenge in the instant appeal on the ground that very meagre compensation was awarded and the Tribunal ought to have taken the temporary loss of earnings for 4½ months which the Tribunal did not take and non-pecuniary damages were not at all granted by the Tribunal, even for future operation as per the evidence of PW.3 an amount of Rs.18,000/- is required and, therefore, sought to grant balance amount.

8. Heard Sri A. Rangacharyulu, learned counsel for the appellant, and Sri P. Durga Prasad, learned Standing Counsel for the respondent – Corporation.

9. Perused the order and the evidence on record both, oral and documentary, let in by the petitioner. It is obvious from the evidence on record, even as per the plea put forth by the petitioner, no permanent disability is forthcoming. In fact, as seen from the nature of injuries as reflected from Ex.A3 - discharge summary of Global Medical

Center, the petitioner sustained two grievous injuries which are on his left shoulder and left leg and underwent operation on 29.04.2003. The injuries are described in the discharge summary – Ex.A3 thus; comminuted fracture left femur and left shoulder dislocation. Further, Exs.A4 and A5 also would show that the petitioner sustained comminuted fracture left femur and left shoulder dislocation and underwent interlocking nailing and reduction of shoulder dislocation on 29.04.2003 and even he was reviewed on 23.07.2003 and advised to take six weeks rest. These documents were proved through the evidence of PW.3. Therefore, when kept in view, the nature of injuries and treatment he has undergone, certainly, the petitioner is entitled to a sum of Rs.25,000/- each as against Rs.20,000/- each as granted by the Tribunal.

10. Concerning the medical expenses, though, the Tribunal observed that Ex.A13 – bunch of medical bills would show the value at Rs.45,000/-, but reduced to Rs.40,000/- without assigning any reasons. Therefore, the petitioner is entitled to Rs.45,000/- as per Ex.A13, as no reason is assigned by the Tribunal as to how as against Rs.45,000/-, Rs.40,000/- was awarded towards medical expenses.

11. The Tribunal has not granted any amount towards loss of temporary earnings. The fact that the petitioner was a contractor is not in dispute. As seen from Ex.A8 - Intimation under Section 143(1)(i)/(ii) of the Income Tax Act, 1961, issued by the Income Tax Officer, Ward – 1(2), Vijayawada, dated 28.03.2002, his annual income was shown as Rs.74,000/- which works out to Rs.6,166/- per month at an average and, thus, for 4½ months, certainly, the petitioner is entitled to Rs.27,000/-, which the Tribunal did not advert to at all, during which time he was disabled from resuming his occupation.

12. The Tribunal has not granted any amount towards removal of rods, for which the petitioner had to undergo another surgical intervention and as per the evidence of PW.3 an amount of Rs.18,000/- was required, hence, the same is granted. Towards attendant and transportation charges a sum of Rs.20,000/- is sought by the petitioner. Looking from the angle of nature of injuries, the petitioner is entitled to a sum of Rs.15,000/- as against Rs.20,000/-. Thus, the petitioner is totally entitled to a

sum of Rs.1,55,000/-. The Tribunal has granted interest at 9% p.a., but, however, it is restricted to 7.5% p.a., on the total amount of Rs.1,55,000/- in view of the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**.

13. Accordingly, the appeal is allowed in part modifying the impugned award passed by the Tribunal, by enhancing the compensation and reducing the rate of interest as stated supra. There shall be no order as to costs.

14. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal shall stand closed.

A. SHANKAR NARAYANA, J

Date: 20.03.2015

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