

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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M.A.C.M.A. No.969 of 2005

JUDGMENT:

Dissatisfied with the amount of Rs.22,500/- granted as compensation by the order dated 23.11.2004 in O.P.No.37 of 1999 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-Il Additional District Judge, Mahabubnagar (for short, 'the Tribunal') as against the claim of Rs.50,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') for the injuries sustained by the petitioner in a road accident, the instant appeal is preferred seeking enhancement of compensation.

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

4. The facts in brief are that on 25.10.1996, the petitioner, working as a labourer in a tipper bearing registration No.AP 26T 7818, was proceeding to Nellore along with a load of material and when it reached outskirts of Makthal, since the driver of the vehicle had driven it in a rash and negligent manner, he lost control, resulting in turning upside down and causing injuries to the petitioner. Even the driver was prosecuted in a criminal case. The petitioner was earning Rs.70/- per day and spent Rs.15,000/- for treatment and sought a sum of Rs.50,000/- as compensation.

5. Respondent No.1-owner of the accident vehicle remained *ex parte*. Respondent No.2-Insurance Company opposed the claim by filing counter. A specific plea was taken that the petitioner was

travelling as an unauthorized passenger, and, therefore, it is not liable to pay compensation and finally sought dismissal of the claim petition.

6. Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry, the petitioner examined himself as P.W.1 besides examining one T.Laxmaiah as P.W.2 and marked Exs.A.1 to A.5; whereas, on behalf of respondent No.2, Venkat Swamy, one of its official, was examined as R.W.1 and marked a copy of insurance policy 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 granted Rs.16,000/- for two fractures holding that they were in the same area construing them as one fracture and Rs.3,000/- for the two simple injuries, Rs.2,000/- towards medical expenses and Rs.1,500/- towards loss of earnings, and, thus, a total sum of Rs.22,500/- was granted as compensation with interest at 9% per annum from the date of petition till realisation, but however, ordered the 2nd respondent initially to deposit the amount and recover the same from the 1st respondent-owner of the vehicle, as it arrived at the finding that the petitioner was travelling as an unauthorized passenger.

9. Aggrieved of the aforesaid order, the instant appeal is preferred by the petitioner seeking enhancement of compensation on the ground that the Tribunal granted meager amount as compensation.

10. Heard Sri K.Venkatesh Gupta, learned counsel for the appellant. Despite service of notices on respondent Nos.1 and 2, none appears for them.

11. Perused the order under challenge and the evidence on record, both, oral and documentary, let in by the parties. Since there is no

challenge as to the finding recorded by the Tribunal ordering the 2nd respondent to pay and then recover from the 1st respondent, that finding cannot be disturbed. It is also stated by the learned counsel for the appellant-petitioner that no notice was received by the appellant that the 2nd respondent-Insurance Company has preferred any appeal challenging that finding.

12. So far as the compensation determined by the Tribunal is concerned, there were two fractures, but of course, in the same area, certainly, it cannot be construed as one fracture, as construed by the Tribunal and since two fractures were to the right pelvic area as reflected in the wound certificate Ex.A.2, the amount of Rs.16,000/- is enhanced to Rs.25,000/- keeping in view the sufferance the petitioner has undergone. For the two simple injuries, the Tribunal granted Rs.3,000/-, which is enhanced to Rs.6,000/-. The amount of Rs.2,000/- granted by the Tribunal towards medical expenses is confirmed. Towards loss of earnings, the Tribunal granted Rs.1,500/- for one month, certainly, it would have been taken considerable time to get normalcy, and, therefore, for six months @ Rs.1,500/-, Rs.9,000/- is granted as against Rs.1,500/- under the said head. Towards extra nourishment and attendant charges, the Tribunal has not granted any amount. Therefore, a sum of Rs.5,000/- is granted under the said head.

13. Thus, the petitioner is entitled to a total sum of Rs.47,000/- (Rupees forty seven thousand) as against Rs.22,500/- 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, reducing the interest from 9% granted by the Tribunal, as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**^[1].

14. Accordingly, the instant appeal is allowed in part modifying the order of 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.

15. 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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