

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

MACMA No. 1536 of 2005

Judgment:

Having got dissatisfied with the award of Rs.40,000/- as compensation, by the order, dated 17.11.2004, in OP No.500 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Ranga Reddy District, at L.B. Nagar, as against the claim of Rs.1,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), the instant appeal is preferred by the petitioner seeking enhancement.

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 17.04.2002 at about 5.00 PM, while the petitioner was standing at Narsingi bus stop to go to Janwada, an RTC bus bearing registration No.AP 5X 6742, driven by its driver in a rash and negligent manner at high speed, came and ran over his right foot, due to which he sustained fracture to his right ankle. He was immediately shifted to Osmania General Hospital, Hyderabad, for treatment. He was treated as inpatient for about 30 days. According to him, he sustained permanent disability and, therefore, sought to grant a sum of Rs.1,00,000/- making the respondents 1 and 2 jointly and severally liable to pay the compensation who are owner and insurer of the said vehicle respectively.

4. Before the Tribunal, the first respondent – owner of the vehicle remained *ex parte*. The second respondent – United India Insurance Company Limited opposed the claim by filing a detailed counter raising various pleas.

5. The Tribunal, based on the said pleadings, framed three issues

in order to fix the responsibility for the accident.

6. During enquiry, the petitioner himself was examined as PW.1 and marked Exs.A1 to A7 to substantiate his claim. On behalf of the second respondent – Insurance Company, no witnesses were examined, but copy of insurance policy was marked as Ex.B1 on consent.

7. The Tribunal, on appraisal of evidence, let in by the petitioner, held issue No.1 in favour of the petitioner recording the finding that due to rash and negligent driving of the driver of the RTC bus the accident had occurred. On issue No.2, considering the fact that the petitioner sustained fracture of right ankle as described in Ex.A3, though, the Medical Officer is not examined, awarded a sum of Rs.20,000/- towards fracture, Rs.10,000/- towards medical expenses, since the petitioner produced medical bills worth Rs.10,000/-, which were marked as Ex.A5, besides granting Rs.7,000/- towards pain and suffering and Rs.3,000/- towards transport, attendant and extra nourishment etc., charges, making a total of Rs.40,000/- as compensation with interest at 9% p.a., from the date of petition till realization.

8. It is the aforesaid order which is under challenge in the instant appeal contending that the Tribunal has not properly appreciated the evidence and, though, the Tribunal has awarded Rs.49,900/- by its earlier order, which was *ex parte*, but later, when the second respondent entered appearance and contested the matter, it has granted only Rs.40,000/- and, therefore, sought to grant balance amount as the documentary evidence Exs.A1 to A7 and Ex.B1 would entitle the petitioner for that amount.

9. Heard Sri B. Parameswara Rao, learned counsel for the appellant and Sri Vutla Srinivasa Rao, learned counsel for the second

respondent – Insurance Company. It is endorsed in the cause title of the grounds of appeal that the first respondent is not a necessary party.

10. Perused the order and material on record. The medical certificate Ex.A3 was issued from Osmania General Hospital, Hyderabad, showing that the petitioner was admitted on 17.04.2002 and surgery was done on 13.05.2002 and discharged on 20.05.2002. The injury was described as fracture of fibula. The petitioner claimed that he was also admitted in L.B. Nagar Hospital on 21.05.2002 and discharged on 28.05.2002 and filed medical bill for a sum of Rs.5,200/- . Thus, the amount of Rs.10,000/- granted towards medical expenses by the Tribunal is fairly adequate and does not warrant interference.

Concerning the amount of Rs.20,000/- granted towards fracture, the same is also confirmed as it was granted for ankle fracture. So far as Rs.7,000/- granted towards pain and suffering is concerned, it is enhanced to Rs.10,000/-. The amount of Rs.3,000/- granted towards transport, attendant and extra nourishment etc., charges, certainly, is on lower side. Therefore, an amount of Rs.5,000/- is granted towards extra nourishment and a sum of Rs.4,000/- towards attendant charges, as at least for three months the petitioner would have required assistance, as he was treated as inpatient for more than 30 days, and towards transport charges a sum of Rs.1,000/- is granted making a total of Rs.10,000/- as against Rs.3,000/- granted by the Tribunal towards these heads. The Tribunal has not granted any amount towards temporary loss of earnings. As seen from the nature of injury, the petitioner sustained fracture of right ankle, which would disentitle him to attend his regular avocation, therefore, a sum of Rs.6,000/- is granted towards loss of temporary earnings. Thus, the petitioner is totally entitled to Rs.56,000/-. So far as interest is concerned, the Tribunal has granted interest at 9% p.a., but on the enhanced amount the petitioner is entitled to interest at 7.5% p.a., from the date of petition

till realization, as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**^[1].

11. Accordingly, the instant MACMA is partly allowed enhancing the compensation and granting interest at 7.5% p.a., on the enhanced amount as stated supra. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

Date: 10.12.2015
Nsr

^[1] 2013 ACJ 1403 = 2013(4) ALT 35