HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1616 of 2005

JUDGMENT:

Dissatisfied with the amount of Rs.15,000/- granted as compensation by the order dated 11.04.2005, in M.V.O.P.No.696 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-X Additional District Judge, Visakhapatnam at Anakapalli (for short, 'the Tribunal') as against the claim for Rs.1,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') and the Rules framed thereunder, 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 are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts in brief are that on 06.10.2001, the petitioner along with one Shaik Abdulla and Guri Satyanandam engaged an auto bearing registration No.AP 31W 1965 to go to Mogalipuram village for attending to electrical wiring and winding works as the petitioner was an electrical contractor and when the auto reached near Vollivari thrashing floor, Mogalipuram village, another auto bearing registration No.AP 31W 1092 driven in a rash and negligent manner at high speed coming in the opposite direction dashed their auto, resulting in injuries to the petitioner and others. He was shifted to K.G.Hospital, Visakhapatnam, and later shifted to a private hospital and he spent Rs.40,000/- towards medical expenses and extra nourishment.

Therefore, sought Rs.1,00,000/- from respondent Nos.1 and 2, who are the owner and insurer of the opposite auto.

5. Respondent No.1-owner of the accident vehicle remained *ex parte*. Respondent No.2-Insurance Company opposed the claim raising various pleas and also attributing rash and negligent driving to the driver of the auto in which the petitioner and others were travelling, and finally, it sought to dismiss the petition.

6. Basing on the said pleadings, the Tribunal framed two issues about the responsibility for the accident. During enquiry, the petitioner examined himself as P.W.1 besides marking Exs.A.1 to A.5; whereas, on behalf of respondent No.2, no witnesses were examined and no documents were marked.

7. The Tribunal, on issue No.1, on appraisal of evidence, both, oral and documentary, let in by the petitioner, held that the accident occurred only due to the rash and negligent driving of the opposite auto belonging to the 1st respondent. The Tribunal, concerning determination of compensation under the same issue, observing that Ex.A.5, X-ray and the opinion of the Radiologist that the injuries are only tenderness and contusion and no bone fractured, granted a sum of Rs.15,000/- with interest at 9% per annum from the date of petition till realisation making both the respondents jointly and severally liable to pay the said amount.

8. Aggrieved of the aforesaid order, the instant appeal is preferred by the petitioner contending in the grounds of appeal that the Tribunal did not properly appreciate the evidence on record, more particularly, nature of injuries and the opinion of the Medical Officer in Ex.A.2, which would show that the petitioner sustained two grievous injuries and other injuries were simple in nature, and, therefore, sought to grant the balance amount.

9. Heard Smt. Jayanti SC Sekhar, learned counsel for the appellant, and Sri Vutla Srinivasa Rao, learned Standing Counsel for the 2nd respondent-Insurance Company. Concerning the 1st respondent-owner, a memo is filed by the appellant, irrespective of presence or absence of 1st respondent-owner, the request in the instant appeal can be adjudicated upon.

10. Ex.A.2 is of vital significance in assessing not only the nature of injuries and the impact on the petitioner but also whether the Tribunal was right in making such observations as mentioned in the above in granting Rs.15,000/-. Ex.A.2 was issued by the C.M.O., K.G.Hospital, Visakhapatnam. The contents therein would reflect that the petitioner sustained injuries in an auto accident and are described as follows:

> "1. A contused swelling over right clavicle of 4 cm x 4 cm, black in colour, tenderness present.
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> 2. An abrasion of size 2 cm x 3 cm over left knee, red in colour.
>
> 3. Tenderness of left hip joint.
>
> 4. Tenderness of left shoulder joint.
>
> 5. Tenderness over left foot.
>
> 6. Tenderness over right lower chest."

The doctor opined that the injuries 1 and 5 were grievous and the remaining injuries were simple in nature. Thus, it is abundantly clear that the first injury was contused swelling over right clavicle of 4 cm x 4 cm and fifth injury was tenderness over left foot, and since Ex.A.2 was issued by the Chief Medical Officer, certainly, the contents therein cannot be discarded. In fact, basing on Exs.A.2 and A.5, the doctor has tendered opinion as to the nature of injuries, which the Tribunal, somehow, overlooked and arrived at wrong conclusion by recording

an incorrect finding thereon. So keeping in view, the nature of injuries since grievous, which would have certainly affected the petitioner in immobilising himself for a considerable period, a sum of Rs.30,000/- is granted towards pain and suffering to the injuries as such. For the four simple injuries, @Rs.3,000/- for each injury, a total sum of Rs.12,000/- is granted towards pain and suffering. Towards extra nourishment, a sum of Rs.5,000/- is granted. Towards temporary loss of earnings, taking into consideration that the petitioner has suffered with grievous and simple injuries and it would have taken some time to regain normalcy, which would have been atleast four months, @Rs.2,000/- for month, a total sum of Rs.8,000/- is granted. Towards transportation and extra nourishment, a sum of Rs.3,000/- is granted.

11. Thus, the petitioner is entitled to a total sum of Rs.58,000/- (Rupees fifty eight thousand) as against Rs.15,000/- 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, as against 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].

12. Accordingly, the instant appeal is allowed in part modifying the order and decree passed by 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.

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

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A. SHANKAR NARAYANA, J

17th March, 2015

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[1] 2013 ACJ 1403