

HON'BLE SRI JUSTICE A. SHANKAR

NARAYANA

M.A.C.M.A. No.1643 OF 2005

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JUDGMENT:

Not satisfied with the award of Rs.30,000/-(Rupees thirty thousand only) granted by the learned Chairman, Motor Accidents Claims Tribunal – cum – X Additional District and Sessions Judge (Fast Track Court), Visakhapatnam at Anakapalle (for short 'the Tribunal') by order, dated 04-05-2005, in M.O.P. No.594 of 2002, as against the claim for Rs.1,00,000/-(Rupees one lakh only) laid by the petitioner under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') read with rule 455 of the Andhra Pradesh Motor Vehicles Rules, 1989 (for short 'the Rules'), the instant appeal is preferred under Section 173 of the Act, seeking enhancement.

2. The appellant herein is the petitioner, in the O.P. before the Tribunal, while respondent Nos.1 and 2, who are owner and insurer of Scooter (Bajaj Chetak) bearing registration No.AP 31E 8191, respectively, are respondent Nos.1 and 2, respectively.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the O.P. before the Tribunal.

4. The facts, in brief, are that on 09-10-2001 at about 5.30 p.m., while the petitioner was returning to her house having attended to coolie work and when she reached Adireddypalem bridge, a scooter bearing registration No.AP 31E 8191 proceeding towards Gullepalle village driven by its rider in a rash and

negligent manner came from behind and hit her, due to which, she sustained fracture to her left leg and other injuries. She was immediately shifted to Government Hospital, Sabbavaram and later shifted to K.G. Hospital, Visakhapatnam and, thereafter, she was shifted to a private hospital where she underwent two surgical interventions on her leg and ankle joint. She claims that she was still undergoing treatment as on the date of making the claim petition before the Tribunal. Therefore, she sought to grant a sum of Rs.1,00,000/- as compensation against respondent Nos.1 and 2, who are owner and insurer of the vehicle respectively.

5. Respondent No.1, owner of the vehicle, remained *ex parte* before the Tribunal.

6. Respondent No.2 – Insurance Company, filed counter opposing the claim.

7. Based on the above pleadings, the Tribunal framed two issues about fixing responsibility for the accident. During inquiry, on behalf of the petitioner, she examined herself as PW.1 and marked Exs.A-1 to A-4. On behalf of the contesting respondent, neither oral nor documentary evidence was let in.

8. The Tribunal dealt with the responsibility for accident and the determination of compensation comprehensively under issue No.1. While holding that the scooterist was responsible for the accident and causing injuries to the petitioner, and basing on the nature of injuries recorded in Ex.A-2, wound certificate, and taking into consideration Ex.A-4, bunch of bills, granted a *lump sum* amount of Rs.30,000/- as compensation with interest at 9% per annum, fastening liability on respondent Nos.1 and 2, jointly

and severally.

9. It is the aforementioned order which is under challenge in the instant appeal, contending in the grounds of appeal, that the Tribunal has not properly appreciated the evidence on record and granted meager compensation, despite the petitioner sustaining fractures and her claim being Rs.1,00,000/- and, therefore, sought to grant balance amount.

10. Heard Sri Jayanti S.C. Sekhar, learned counsel for the appellant – petitioner and Sri Srinivas Rao Vutla, learned counsel for the 2nd respondent – Insurance Company. Despite service of notice, none appears for respondent No.1.

11. Perused the order and the evidence let in by the petitioner. Admittedly, no witnesses were examined on behalf of the contesting 2nd respondent and no documents were filed.

12. The injuries sustained by the petitioner, as per Ex.A-2 – wound certificate, are that the first injury, which was swelling, pain on middle part of left leg and presence of tenderness and even deformity, was described as ‘grievous nature’ since both bones of left leg were ruptured, whereas other three injuries described therein are ‘simple in nature’. The certificate was issued by the Casualty Medical Officer, Kind George Hospital, Visakhapatnam.

So, when kept in view, the simple injuries sustained by the petitioner which are three in number, a sum of Rs.9,000/- is granted @ Rs.3,000/- per injury. For grievous injury and towards pain and suffering since there was fracture of both bones, a sum of Rs.25,000/- is granted. Towards extra nourishment, a sum of

Rs.5,000/- is granted. Since main limbs were affected for a considerable period, the petitioner would have suffered without attending to her regular avocation. Therefore,

@ Rs.2,000/- per month for six months, a sum of Rs.12,000/- is awarded. Thus, in all, the petitioner is entitled to a sum of Rs.51,000/- (Rupees fifty one thousand only) as against the amount of Rs.30,000/- granted by the Tribunal. The rate of interest at 9% granted by the Tribunal is reduced to 7.5% as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**^[1].

13. In the result, the appeal is allowed in part, and the order and decree, dated 04-05-2005, in M.O.P. No.594 of 2002, passed by the Tribunal are modified, enhancing the compensation to Rs.51,000/- (Rupees fifty one thousand only) from Rs.30,000/- with interest thereon at the rate of 7.5% from the date of petition till realization. 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

February 24, 2015.
Mgr

^[1]. 2013 ACJ 1403