

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

MACMA No. 1288 of 2005

Judgment:

Having got dissatisfied with the award of Rs.36,500/- as compensation, 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, challenging the order, dated 11.03.2005, in OP No.1052 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-V Additional District Judge (III Fast Track Court), Nalgonda, at Miryalguda.

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 02.06.2001, the petitioner along with others was travelling in a Tractor-Trailer bearing registration No.AP-24G-1115/AP 24-T-5216 from Dilavarpur in order to go to his village Gudur Camp Thanda having attended the marriage of his relatives. Though, the Tractor-Trailer was being driven on the extreme left side of the road, when it reached Kothagudem village, at about 00.30 hours, a lorry bearing registration No.KA-41-241 driven by its driver at high speed in a rash and negligent manner came in opposite direction i.e., from Miryalguda side and its back portion came into contact with the Trailer hitting it, due to which the petitioner and one Raju sustained grievous injuries and they were shifted to Government Hospital, Miryalguda, for treatment. The Station House Officer, Miryalguda (Rural), registered a case in Crime No.40 of 2001, under Section 337 IPC, against the driver of the lorry.

4. The first respondent – owner of the Lorry remained *ex parte*. The second respondent – Insurance Company opposed the claim raising various pleas and also contending that the petitioner was not supposed to travel in the Tractor which was

intended for agricultural purpose and, therefore, sought to dismiss the claim against it.

5. The Tribunal, based on the aforesaid pleadings, framed the following issues.

- “1. Whether the accident was due to rash and negligent driving by the driver of Lorry No.KA 04A 241?
2. Whether the claim is bad for non-joinder of necessary and proper parties?
3. Whether the petitioner is entitled for any compensation, if so, what is the quantum of amount?
4. To what relief?”

6. During the course of enquiry, the petitioner examined himself as PW.1 and marked Exs.A1 to A6 to substantiate his claim. On behalf of the second respondent, no witnesses were examined, however, copy of insurance policy issued by the second respondent 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 holding that due to rash and negligent driving of the lorry driver the accident had occurred. On issue No.2, as to whether the claim is bad for non-joinder of necessary and proper parties, the Tribunal negated it. On issue No.3, as regards determination of compensation, the Tribunal having found from Ex.A3 – wound certificate, issued by the Medical Officer, Government Hospital, Miryalguda, showing that the petitioner sustained two simple injuries and two fractures on right clavicle and shaft of femur, granted Rs.10,000/- each for two fracture injuries and Rs.2,000/- each for two simple injuries, besides granting Rs.5,000/- towards pain and suffering, Rs.2,000/- towards transport charges and granted Rs.2,000/- as against Rs.8,000/- claimed towards extra nourishment, treatment and medical expenses basing on the entries in the II Schedule to Section 163A of the Act. The Tribunal has also granted Rs.500/- towards damages to clothing and Rs.3,000/- towards temporary loss of earnings for two (2) months and, thus, a total sum of Rs.36,500/- was awarded by the Tribunal as compensation.

8. No representation for the appellant. However, since the learned Standing Counsel for the second respondent – Insurance Company reported ready, proceeded with the hearing of the matter on merits. The instant appeal was dismissed against the first respondent for default, as per the orders of this Court, dated 05.01.2012, however, since the first respondent has suffered a decree by remaining *ex parte* before the Tribunal, the dismissal order passed against him by this Court is of no consequence in view of the decision of the Division Bench of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma**.

9. Admittedly, the second respondent – Insurance Company has not preferred any appeal challenging any violations of terms and conditions of the policy issued by it. Besides the same, the Tribunal, on issue No.2, held that the claim is not bad for non-joinder of necessary parties favouring the petitioner. Therefore, virtually, there cannot be any resistance on the part of the second respondent in treating the appellant as third party, so far as the second respondent is concerned.

10. Turning to the injuries sustained by the petitioner in assessing whether the amount granted by the Tribunal is just and adequate, as seen from Ex.A3 – wound certificate, the petitioner sustained two simple injuries and two fractures on right clavicle and shaft of femur. He was, admittedly, treated in the Government Hospital, Miryalguda. The Tribunal has awarded Rs.10,000/- each for two grievous injuries and Rs.2,000/- each for two simple injuries, which appears to be on lower side. Therefore, towards two simple injuries a sum of Rs.6000/- and towards two grievous injuries a sum of Rs.30,000/- are granted. Towards pain and suffering the Tribunal granted a sum of Rs.5,000/- which appears to be on lower side and the same is enhanced to Rs.15,000/-. The Tribunal has granted Rs.2,000/- towards extra nourishment, treatment and medical expenses as against the claim of Rs.8,000/-, but the petitioner is entitled to Rs.8,000/-, keeping in view, the nature of injuries sustained by him and the sufferance he had undergone. Hence, it is enhanced to Rs.8,000/-. Towards damages to clothing the Tribunal granted Rs.500/- and the same is not disturbed. Towards temporary loss of earnings, the Tribunal, computing the loss of earnings for two months, granted Rs.3,000/-, but, however, the Tribunal has not considered whether the petitioner was able to move freely and attend normals within two months. When looked at the nature of injuries and the sufferance

of the petitioner he had undergone, certainly, at least it would have taken six months time to become normal to attend to his occupation. Hence, for a period of six months at the rate of Rs.1500/- per month, an amount of Rs.9,000/- is granted enhancing it from Rs.3,000/- granted by the Tribunal. Towards transport charges a sum of Rs.2,000/- is granted. Thus, the petitioner is totally entitled to a sum of Rs.70,500/- (Rs.6,000/- + Rs.30,000/- + Rs.15,000/- + Rs.8,000/- + Rs.500/- + Rs.9,000/- + Rs.2,000/-) with interest at 7.5% p.a., on the entire amount 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**, by enhancing the rate of interest from 6% p.a., granted by the Tribunal.

11. Accordingly, the instant MACMA is partly allowed modifying the impugned award passed by the Tribunal, by enhancing the compensation and the rate of interest 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: 25.11.2015

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