

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1809 OF 2005

JUDGMENT:

Having got dissatisfied with the amount of Rs.23,000/- granted as compensation by the order dated 13.08.2004 in O.P. No.2346 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-II Additional Chief Judge, City Civil Court, Hyderabad (for short, 'the Tribunal') as against the claim of Rs.1,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), for the injuries sustained by the appellant-petitioner in a road accident, the instant appeal is preferred under Section 173 of the Act seeking enhancement of compensation.

2. The appellant herein is the petitioner, while respondent Nos.1 and 2 herein, who are the owner and insurer of the lorry bearing registration No.AP 12T 3006, respectively, are respondent Nos.1 and 2, respectively, 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 fact-situation occurring in the instant case is that the petitioner is the housewife, earning Rs.3,000/- per month by attending tailoring work and when she was proceeding on a scooter bearing registration No.AP 11G 5618 as a pillion rider towards Warasiguda through Shivam road at about 7-45 p.m., a lorry bearing registration No.AP 12T 3006 proceeding in the same direction driven in a rash and negligent manner at high speed, dashed the scooter resulting both of them falling down and she was shifted to Sri Rang Hospital, where she was treated as inpatient. On the complaint, the Station House Officer, Amberpet Police Station registered a case in Crime No.317 of 2000. Claiming that she sustained permanent disability and unable to continue her tailoring work on account of the accident

and she was forced to engage medical attendant to assist her on payment of Rs.1,000/- per month and she incurred a sum of Rs.25,000/- towards medical expenses, sought a sum of Rs.1,00,000/- as compensation from respondent Nos.1 and 2, who are the owner and insurer of the lorry.

5. Respondent No.1 remained *ex parte*. Respondent No.2 opposed the claim by raising various pleas.

6. Basing on the said pleadings, the Tribunal framed the following issues about the responsibility for the accident:

1. Whether the accident was occurred due to rash and negligent driving on the part of the driver of the lorry ?
2. Whether the petitioner is entitled for compensation ? If so, to what amount and from whom ?
3. To what relief ?

7. During enquiry, the petitioner examined herself as P.W.1 besides marking Exs.A.1 to A.6 to substantiate her claim; whereas, on behalf of the respondents, no witnesses were examined, but the copy of insurance policy was marked as Ex.B.1 on consent.

8. The Tribunal, on issue No.1, on appreciation of evidence on record, both, oral and documentary, let in by the parties, held that the accident had occurred only due to rash and negligent driving of the driver of the lorry, and, accordingly, recorded finding in favour of the petitioner.

9. On issue No.2, the Tribunal having found that the petitioner sustained fracture to her left femur as per Ex.A.3-medical certificate, granted Rs.17,000/- for the injury, Rs.4,000/- towards pain and suffering, extra nourishment and transportation and also granted Rs.2,000/- towards medical bills covered by Ex.A.4, and, thus, granted a total sum of Rs.23,000/- with interest at 9% per annum.

10. It is the aforesaid order which is under challenge in the instant appeal on the ground that the compensation granted by the

Tribunal was very meager contending in the grounds that the Tribunal has not properly appreciated the evidence on record. It is according to the petitioner, she sustained fracture to her left hand, left thigh, forearm and both legs and also multiple injuries all over the body, still, the Tribunal has not considered her evidence and the partial permanent disability she has been suffering, and, therefore, sought to grant the balance amount.

11. Heard Sri T.Venkat Reddy, learned counsel for the appellant. Despite service of notice on respondent No.1-driver of the lorry, none appears. No representation on behalf of respondent No.2-Insurance Company.

12. Perused the order and the evidence available on record, both, oral and documentary. As seen from the contents of Ex.A.3, the petitioner sustained fracture to her left femur and the Tribunal has awarded Rs.17,000/- for the injury. The said amount cannot be disturbed in the absence of any further material placed on behalf of the petitioner, as the petitioner has not chosen to examine the medical officer who treated her. However, the amount of Rs.4,000/- granted by the Tribunal towards pain and suffering is on lower side. Therefore, towards pain and suffering, a sum of Rs.5,000/- is granted as against Rs.4,000/- granted by the Tribunal. Besides the same, a sum of Rs.5,000/- is granted towards extra nourishment and a sum of Rs.3,000/- towards transport charges. The amount of Rs.2,000/- granted by the Tribunal towards medical expenses covered under Ex.A.4 is not disturbed.

13. Thus, the petitioner is entitled to a total sum of Rs.32,000/- (Rupees thirty two thousand) as against Rs.23,000/- granted by the Tribunal, towards compensation and the same is accordingly granted. So far as the interest is concerned, the Tribunal granted interest at 9% per annum and the same is maintained on the amount granted by the Tribunal, but on the enhanced amount, interest at 7.5% per annum is granted 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.

14. Accordingly, the instant appeal is allowed in part modifying the order passed by the Tribunal, by enhancing the compensation, 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

24th November, 2015

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