

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

M.A. C.M.A. No.12 of 2005

Between:

Shivarathri Sailoo

... Appellant

and

Natkar Babu and another

... Respondent (s)

DATE OF JUDGMENT PRONOUNCED: **16th July 2015**

SUBMITTED FOR APPROVAL:

THE HON'BLE SMT JUSTICE ANIS

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| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reports/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

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The HON'BLE SMT JUSTICE ANIS

M.A. C.M.A. No.12 of 2005

J U D G M E N T :

This appeal is filed by the appellant/petitioner under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the Judgment and Decree dated 20.09.2004, passed by the Chairman, Motor Vehicle Accident Claims Tribunal-cum- District Judge, Nizamabad in O.P.No.1173 of 1998, awarding compensation of Rs.5,000/-

2. The appellant/petitioner filed the above O.P under Section 166 of the Act, claiming compensation of Rs.4,00,000/- for the injuries sustained by the petitioner in a motor vehicle accident, that occurred on 20.11.1998.

3. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the Original Petition.

4. The brief averments made in the petition are that on 20.11.1998 the petitioner was travelling in auto bearing No.AP 25/T-6397 from Dandigutta towards Navipet. At about 3.30 p.m., when the auto reached Ashanagar Village shivar on Kandakurti to Navipet road, the driver of the auto drove the vehicle in rash and negligent manner with high speed and lost control over the vehicle due to which the auto turned turtle and the petitioner sustained fracture injuries to spinal cord, and also multiple injuries on head, both legs and various parts of the body. Due to the said injuries, the petitioner is not in a position to move from bed and even walk and became dependent on others and sustained 100% permanent disability. The petitioner was earning Rs.6,000/- per month and due to permanent disability, he is unable to attend his regular duties. Therefore, the petitioner prayed the Court to grant compensation.

5. The Respondent No.1 remained ex-parte.

6. The brief averments made in the written statement filed by the 2nd respondent are as follows :

The 2nd respondent put the petitioner to prove the manner of the accident, the age and income of the petitioner and stated that the accident took place due to gross negligence of the driver of the auto bearing No.AP 25/T-6397. Further, it is stated that the accident has not been reported by the owner of the auto in collusion with the petitioner. The

2nd Respondent also stated that the driver of the auto bearing No.AP 25/T-6397 is not having valid driving licence to drive the said vehicle at the time of accident and that the auto was overcrowded with more than 10 passengers, due to which the driver lost control over the vehicle and caused the accident and prayed to dismiss the petition as the claim of the petitioner is high and excessive.

7. Basing on the above pleadings, the Tribunal framed three issues and to substantiate the claim, the petitioner got examined himself as P.W.1 and got examined another witness as P.W.2 and got marked Exs.A1 to A10 and Ex.C1, Exs.X1 and X2 on his behalf. Neither oral nor documentary evidence is adduced on behalf of respondents.

8. After considering the oral and documentary evidence, the Tribunal held that the accident occurred due to rash and negligent driving of the driver of the Auto bearing No.AP-25/T-6397, resulting the injuries to the petitioner and awarded compensation of Rs.5,000/- along with interest at 9% p.a to the petitioner.

9. Being not satisfied with the compensation awarded by the Tribunal, the petitioner preferred the present appeal.

10. The learned counsel appearing for the appellant/ petitioner argued that in the said accident the petitioner suffered fracture injuries and he was in the hospital for about seven days and spent huge amounts and the Tribunal without considering all these aspects granted meagre compensation and therefore prayed the Court to enhance the compensation.

11. On the other hand, the learned counsel appearing for the second respondent-Insurance Company argued that the Tribunal after considering the entire evidence granted reasonable compensation and that the finding of the Tribunal needs no

interference. It further argued that the evidence of PW2 cannot be accepted because in his cross-examination he clearly admitted that as per the wound certificate/Ex.A3 petitioner sustained only one simple injury and that he examined the petitioner only on 07.11.2001, three years after the accident, and issued Ex.C1 disability certificate. Further according to him, he found fracture of subluxation of C5 over C6 underneath both lower limbs and accordingly, he assessed the disability, but as per X-ray films filed by the petitioner, there appears no fracture injuries as much as subluxation of C5 over C6 as stated by PW2 and finally prayed the Court to dismiss the appeal.

12. Having regard to the submissions made by the learned counsel appearing for both parties, the points which are to be decided in this appeal are as follows:

1. Whether the appellant is entitled for enhancement of compensation as prayed for?
2. Whether the compensation awarded by the Tribunal is just and reasonable?

13. **POINTS 1 & 2:** Apparently after the accident, petitioner was initially admitted in Government Head Quarters Hospital, Nizamabad Government Hospital on 20.11.1998 and there he took treatment for seven days and thereafter he was discharged on 27.11.1998. Ex.A5 discharge ticket shows that the petitioner was again admitted in the hospital on 30.11.1998 and discharged from hospital on 04.01.1999 i.e., for about three months he took treatment. In order to prove the injuries, petitioner filed Ex.A3 wound certificate, Ex.A4 xerox copy of case sheet, Ex.A5 discharge ticket and Ex.A6 and A7 medical bills and prescriptions.

14. A perusal of wound certificate/Ex.A3 shows that petitioner received contusion on the forehead which is simple in nature and he was admitted in the hospital on 20.11.1998 and discharged on

27.11.1998. As per Ex.A5 the petitioner was again admitted in the hospital on 30.11.1998 and was discharged on 04.01.1999. But it cannot be accepted as the document filed by the petitioner i.e, ExA5 does not contain the seal of the hospital or the name of the doctor who issued it. The Tribunal considering these aspects rightly rejected Ex.A5 and A6.

15. The learned counsel for the insurance company argued that evidence of PW2 cannot be looked into and the certificate issued by him under Ex.C1 cannot be taken into consideration for the reason that PW2 has not treated the petitioner after the accident. Further there is a medical board at the Government Hospital, Nizamabad which is competent to issue the disability certificate. Therefore, PW2 cannot be considered to be a competent authority for issuing disability certificate, and as such his evidence cannot be taken into consideration.

16. If the evidence of PW2 is excluded, the evidence of PW1 remains and the Tribunal after considering the evidence of petitioner/PW1, who received simple injury as per Ex.A3, granted Rs.5,000/- as compensation and the said compensation is no doubt just and reasonable.

17. The learned counsel for the appellant argued that for the said injury, the petitioner went to Government Hospital and stayed there for seven days initially and during that period the petitioner must have faced inconvenience for the pain and sufferance and further he must have been spent some amounts for his treatment.

18. It is no doubt true that the Tribunal while granting Rs.5,000/- has not stated anything under which head, the said amount was granted.

19. Considering the facts and circumstances of the case, an

amount of Rs.1,000/- towards medical expenses, Rs.1,000/- towards extra nourishment, Rs.1,000/- towards pain & sufferance and Rs.500/- towards transportation charges is granted. Thus, the petitioner is entitled for the enhanced compensation of Rs.3,500/- and both the respondents are jointly and severally liable to pay the compensation awarded to the petitioner.

20. The learned counsel for the respondents contended that the rate of interest granted by the Tribunal at 9% p.a to the petitioner is high and excessive. Admittedly, the Tribunal has granted the rate of interest to the petitioner at 9% p.a, against the settled principles of law.

21. In ***Sanobanu Nazirbhai Mirza and others v. Ahmedabad Municipal Transport Service***^[1], the Hon'ble Supreme Court awarded interest @ 7.5% p.a. In ***Rebeka Minz and others v. Divisional Manager, United India Limited Insurance Company Limited and another***^[2], the Hon'ble Supreme Court awarded interest at 7% p.a. Thus, in view of the different rate of interests granted by the Apex Court in the judgments cited above, I am of the considered view that the rate of interest awarded by the Tribunal is excessive and therefore, it is a fit case to reduce the rate of interest from 9% to 7.5% p.a. only on the enhanced amount.

22. In the result, the Appeal is allowed in part, enhancing the compensation awarded by the Tribunal to the petitioner from Rs.5,000/- to Rs.8,500/- and on the enhancement amount of Rs.3,500/-, an interest @ 7.5% p.a. is awarded from the date of appeal till the date of realisation. On deposit of the said amount, the appellant/petitioner is permitted to withdraw the amount. No order as to costs.

23. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

**ANIS,
J.**

Date: 16.07.2015

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[\[1\]](#) 2013 ACJ 2733

[\[2\]](#) 2012 ACJ 2328