

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

MACMA Nos. 1406 of 2005 and 1468 of 2005

Common Judgment:

These two appeals have been preferred by the petitioners in OP Nos.91 of 2002 and 90 of 2002 respectively, on the file of the Chairman, Motor Accidents Claims Tribunal-cum-Additional Metropolitan Sessions Judge for the trial of Jubilee Hills Car Bomb Blast Case-cum-Additional Family Court-cum-XXIII Additional Chief Judge, Red Hills, Nampally, at Hyderabad (for short 'the Tribunal'), dissatisfied with the amounts of Rs.18,000/- and Rs.45,000/- respectively, granted by the Tribunal towards compensation for the injuries sustained by them in a road accident, by the orders dated 05.04.2005, as against the claims of Rs.2,00,000/- and Rs.3,00,000/- respectively, laid under Sections 140, 144 and 166 of the Motor Vehicles Act, 1988 (for short 'the Act') and under Rule 455 of the Andhra Pradesh Motor Vehicle Rules 1989, seeking enhancement.

2. Since the awards in respective OPs arise out of one and the same accident, these two appeals are taken up for disposal by way of common judgment.

3. For convenience sake, the parties hereinafter referred to as they were arrayed before the Tribunal in the Original Petitions.

4. The facts, in brief, are that on 16.11.2001 at about 4.00 pm, the petitioner, who was driving his Scooter bearing registration No.AP 9AG 7683, was proceeding to Vattinagulapally to his dairy farm and, when it reached R & B Road of the said village, a Tipper bearing registration No.ADT 98, coming in the opposite direction driven in a rash and negligent manner at high speed by its driver, dashed the Scooter, due to which the petitioner as well as the pillion rider, who is

the petitioner in other OP, fell down and sustained grievous injuries and they were shifted to Nizams Institute of Medical Sciences (NIMS), Hyderabad. Even the concerned police registered a case in Crime No.72 of 2001. Therefore, they sought Rs.2,00,000/- and Rs.3,00,000/- respectively, as compensation.

5. In both the claim petitions, the first respondent - owner of the Tipper remained *ex parte*. The second respondent – Insurance Company filed counter opposing the claim raising various pleas.

6. The Tribunal framed three identical issues in both the OPs. During enquiry, the petitioners respectively, examined themselves as PW.1 and also examined one B. Pandu as PW.2 in both the OPs. No medical officer was examined by the petitioners, but marked Exs.A1 to A5 in both the OPs. Copies of Insurance Policy and driving licence were marked as Exs.B1 and B2 in both the OPs. No witnesses were examined on behalf of the second respondent – Insurance Company.

7. The Tribunal, on appraisal of evidence let in by the petitioners, held issue No.1 in both the OPs in favour of the petitioners.

8. The Tribunal, on issue No.2, in the former appeal (OP No.91 of 2002), considering the wound certificate – Ex.A3 granted a sum of Rs.13,000/- towards medical expenses, Rs.3,000/- towards pain and suffering, Rs.1,000/- towards transportation and Rs.1,000/- towards extra nourishment, making it a total sum of Rs.18,000/- for fracture of both bones of right leg sustained by the petitioner with interest at 6% p.a.

9. In the latter appeal (OP No.90 of 2002), the Tribunal has granted Rs.35,000/- towards transport, medical expenses and extra nourishment and Rs.10,000/- towards multiple abrasions sustained on the chest of the petitioner and, thus, a total sum of Rs.45,000/- was granted with interest at 6% p.a.

10. The aforesaid orders and decrees are under challenge in the instant appeals contending in the grounds that the Tribunal has not properly appreciated the evidence and, though, they sustained grievous injuries the Tribunal has granted meagre compensation and, therefore, both the appellants sought to grant balance amount in their respective appeals.

11. Heard Sri Jayanti SC Sekhar, learned counsel for the appellants in these appeals and Sri Naresh Byrapaneni, learned counsel for the second respondent – Insurance Company. In the latter appeal, the appeal is dismissed against the first respondent for default, by the order dated 05.01.2012. In the former appeal, the first respondent, who is the same respondent, was not served and a memo was filed to that effect. However, the dismissal of appeal against the first respondent is of no consequence in view of the decision of a Division Bench of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma**^[1]. Therefore, even non-service of notice on the first respondent in the former appeal is of any consequence in determining the just and reasonable compensation as sought by the appellants herein.

12. Now the common points that arise for consideration in both the appeals are whether the amount awarded by the Tribunal is just and reasonable and whether the interest granted at 6% p.a., can be sustained.

13. Admittedly, since the medical officer is not examined, no disability is forthcoming in either of the claim petitions.

14. So far as the injuries sustained by the petitioner in the former appeal (MACMA No.1406 of 2005) is concerned, Ex.A3 issued by one Dr. Ravi Kumar on 24.01.2002 would show that the petitioner

sustained fracture of both bones of right leg and when the petitioner was advised to undergo surgical intervention he refused and, therefore, he was referred to Gandhi Hospital and the injuries were grievous in nature according to the Doctor, who issued Ex.A3. A finding was also recorded to that effect by the Tribunal, but the Tribunal, somehow, granted Rs.3,000/- towards pain and suffering, Rs.1,000/- towards transportation and Rs.1,000/- towards extra nourishment. The other amount of Rs.13,000/- granted by the Tribunal was towards medical expenses. Thus, the Tribunal has granted a total sum of Rs.18,000/-. The amount of Rs.13,000/- granted by the Tribunal towards medical expenses is confirmed. However, towards the injury and pain and suffering the amount of Rs.3,000/- granted by the Tribunal is enhanced to Rs.30,000/-, keeping in view, the nature of injury being fracture of both bones of right leg which will disable the petitioner constraining him to undergo greater inconvenience. The amount of Rs.1,000/- granted towards extra nourishment is enhanced to Rs.5,000/-. Towards transportation a sum of Rs.3,000/- is granted. Towards loss of temporary earnings no amount is granted by the Tribunal. Though, the petitioner claimed that he was doing agriculture and horticulture, earning Rs.10,000/- per month, but no evidence is forthcoming. Therefore, keeping in view, the petitioner must be earning at least Rs.2,000/- per month in the year 2001, during which year the accident had taken place, for a period of six (6) months a sum of Rs.12,000/- (Rs.2,000 x 6) is granted towards loss of temporary earnings and, he would have required even an attendant, as his one of the lower limbs was affected due to fracture of both bones of right leg and, therefore, a sum of Rs.5,000/- is granted towards attendant charges. Thus, the petitioner is totally entitled to Rs.68,000/-. So far as the rate of interest is concerned, the interest awarded by the Tribunal at 6% p.a., is enhanced to 7.5% p.a., from the date of petition till realization on the entire compensation amount of Rs.68,000/- as per the judgment of the Hon'ble Apex Court in **Rajesh and others v.**

Rajbir Singh and others^[2].

15. So far as the petitioner in the latter appeal (MACMA No.1468 of 2005) is concerned, Ex.A3 issued by the Medical Officer, NIMS, Hyderabad, shows that the petitioner, in fact, sustained multiple abrasions on the left side of the chest, which are grievous in nature. The medical evidence is not forthcoming to show as to whether he was treated as inpatient and only out patient cards are filed by the petitioner. However, the amount of Rs.10,000/- granted by the Tribunal is towards pain and suffering but not to the injury which appears to be on lower side. Therefore, keeping in view, the nature of injury, towards injury as well as pain and suffering the same is enhanced to Rs.25,000/-. The Tribunal granted Rs.35,000/- towards transport, medical expenses and extra nourishment. Since, it is on record, that the petitioner paid an amount of Rs.32,185/- towards medical bills, the said amount of Rs.32,185/- is granted towards medical expenses. Further, towards extra nourishment a sum of Rs.10,000/- is granted and towards transport charges a sum of Rs.3,000/- is granted, keeping in view, the petitioner would have attended for reviews as can be gathered from the outpatient cards filed by him issued by NIMS. Towards temporary loss of earnings, keeping in view, that the petitioner must have suffered for a period of three months, a sum of Rs.6,000/- is granted. Thus, the petitioner is totally entitled to Rs.76,185/-. So far as the rate of interest is concerned, the interest awarded by the Tribunal at 6% p.a., is enhanced to 7.5% p.a., from the date of petition till realization on the entire compensation amount of Rs.76,185/- as per the judgment of the Hon'ble Apex Court in **Rajesh's** case (2 supra).

16. Accordingly, both the appeals are allowed in part modifying the impugned awards passed by the Tribunal, by enhancing the compensation and the rate of interest as stated supra. There shall be

no order as to costs.

17. As a sequel thereto, Miscellaneous Applications, if any, pending in these appeals shall stand closed.

A. SHANKAR NARAYANA, J

Date: 10.12.2015

Nsr

[\[1\]](#) 2001(1) ALD 453 (DB)

[\[2\]](#) 2013 ACJ 1403 = 2013(4) ALT 35