

HON'BLE SRI JUSTICE A. SHANKAR

NARAYANA

M.A.C.M.A. No.2484 OF 2005

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JUDGMENT:

Not satisfied with the award of Rs.5,000/-(Rupees five thousand only) granted by the learned Chairman, Motor Accidents Claims Tribunal – cum – IX Additional Chief Judge (Fast Track Court), City Civil Courts, Hyderabad (for short 'the Tribunal') by order, dated 02-08-2004, in O.P. No.949 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 Tipper lorry bearing registration No.AP 9U 5237, 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 08-02-2001 at about 12.30 p.m., the petitioner along with three other labourers was travelling in an auto-rickshaw bearing registration No.AP 9W 1572, and when it reached Y.R. Reddy Gardens on the road of Kothwalguda, a Tipper lorry bearing registration No.AP 9U 5237 with a load of dauber came in opposite direction and hit the auto-rickshaw, due

to which, she sustained injuries along with others. The Station House Officer, Shamshabad Police Station also registered a case in Crime No.39 of 2001 under Section 337 IPC. The petitioner claims that she was earning Rs.3,000/- per month and, therefore, she sought 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, while denying the allegations levelled in the petition, contended that the 2nd respondent alone is liable to compensate as the vehicle was insured with it.

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

7. Based on the above pleadings, the Tribunal framed three 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 respondents, no witnesses were examined, but, however, copy of insurance policy was marked as Ex.B-1.

8. The Tribunal, on issue No.1, by appreciating the evidence on record, held issue No.1 in favour of the petitioner, and on issue No.2, though, referring to the contents of Ex.A-2 – O.P. chit of Government Civil Hospital, Shamshabad, but on the ground that X-ray was not filed and the doctor was not examined, refused to take into consideration about the fracture of pelvic bone and second rib fracture mentioned in Ex.A-2 and considering them as

simple injuries, granted a sum of Rs.3,000/- towards pain and suffering at Rs.1,000/- for each injury and Rs.2,000/- towards extra nourishment and medicines and, thus, granted a total sum of Rs.5,000/- as compensation.

9. It is that order which is under challenge in the instant appeal, contending in the grounds of appeal, that the Tribunal did not consider Exs.A-3 and A-4 and though, there were fractures to pelvic bone and second rib fracture, the Tribunal has not taken into consideration and treating them as simple injuries, more particularly, a X-ray was not filed and, therefore, sought to grant balance amount.

10. Heard Sri Jayanthi S.C. Sekhar, learned counsel for the appellant – petitioner and Sri R. Venkata Rao, 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, both, oral and documentary.

12. Ex.A-2 clearly reflects that the name of petitioner was mentioned and the injuries sustained by her on 08-02-2001 were alleged to have received when met with RTA at Shamshabad between tipper and auto-rickshaw. The description of injuries are, fracture of pelvic bone, head injury and second rib fracture. No doubt, X-ray report was not filed and the doctor was not examined, but that cannot be a ground to disbelieve the nature of injuries specified in Ex.A-2, which was issued by a Civil Assistant Surgeon of Government Hospital, Shamshabad, since he has

referred her to Osmania General Hospital, Hyderabad, but strangely she did not go to Osmania General Hospital, but got treated herself under Dr.Satyanarayana at Gowliguda. Be that as it may, the fact that the Tribunal has considered the injuries, but not the nature of injuries, is sufficient enough to construe that the document under Ex.A-2 is not a got up document and it is a genuine one. Therefore, due weight has to be given to the nature of injuries specified therein. As such, keeping in view, the fracture of pelvic bone and 2nd rib fracture, the petitioner is entitled to a sum of Rs.25,000/- for both fractures and, for head injury, which is simple in nature, a sum of Rs.3,000/- is granted. Towards extra nourishment, a sum of Rs.5,000/- is granted. Thus, in all, the petitioner is entitled to a sum of Rs.33,000/- (Rupees thirty three thousand only) as against the amount of Rs.5,000/- 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, dated 02-08-2004, in O.P. No.949 of 2002, passed by the Tribunal is modified, enhancing the compensation to Rs.33,000/- (Rupees thirty three thousand only) from Rs.5,000/- with interest thereon at 7.5% per annum 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