

HON'BLE SMT JUSTICE ANIS

M.A.C.M.A.No.1345 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 award dated 13.08.2004, passed by the Chairman, Motor Accident Claims Tribunal-cum-VI Additional District Judge, (Fast Track Court), Nizamabad, in O.P.No.1823 of 2001, awarding compensation of Rs.32,000/-.

2. The appellant/petitioner filed the above Original Petition under Section 166 of the Act read with Rule 455 of the Andhra Pradesh Motor Vehicle Rules, 1989 (for short 'the Rules'), claiming compensation of Rs.2,00,000/- along with interest at 24% p.a, on account of the injuries sustained by him in a motor vehicle accident that occurred on 02.10.2001.

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 02.10.2001 at 01:00 p.m, while the petitioner was going on his cycle from Shakkarnagar to Yedpally village as a pillion rider and when he reached near Narsapur village shivar, a lorry bearing No.APT.9831 driven by it driver at high speed in a rash and negligent manner came and dashed against the cycle, on which he was travelling. As a result of the accident, the petitioner sustained fracture on his left collar bone, injuries on his head and other parts of the body. After the accident, he was admitted in Government Hospital, Bodhan and from there shifted to Government Headquarters Hospital, Nizamabad, where he was treated by a team of doctors and thereafter, he took treatment in private hospitals. The petitioner spent Rs.1,00,000/- for his treatment. Due to the injuries, he was unable to do any work and he sustained permanent

disability, therefore prayed the Court to grant compensation of Rs.2,00,000/- against both the respondents being the owner and insurer of the lorry.

5. Before the Tribunal, the first respondent remained *ex parte*.

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

The second respondent put the petitioner to prove the manner of accident, his age and income and treatment taken by him in various hospitals by spending huge amounts. The lorry was not covered by any insurance policy at the time of accident and therefore the Insurance Company is not liable to pay any compensation. The claim of the petitioner is high and excessive and therefore, prayed the Court to dismiss the petition.

7. Basing on the above pleadings, the Tribunal framed three issues and to substantiate his claim, the petitioner got examined PWs.1 & 2 and got marked Exs.A.1 to A.6 and Ex.X1 on his behalf. On behalf of the contesting respondent, no oral or documentary evidence was adduced.

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 lorry bearing No.APT.9831 and awarded compensation of Rs.32,000/- along with interest at 9% p.a. to the petitioner payable by both the respondents.

9. Being not satisfied with the award passed by the Tribunal, the petitioner preferred the present appeal.

10. The learned counsel appearing for the appellant/petitioner argued that the petitioner sustained two grievous injuries and took treatment in various hospitals; that PW.2 is the doctor, who treated the petitioner in the Government Headquarters Hospital, Nizamabad and Ex.X1-case

sheet was issued by the Government Headquarters Hospital, Nizamabad. Further, it is argued that the petitioner spent huge amounts for his treatment and the Tribunal without considering the said fact, granted a meagre compensation; that in view of the grievous injuries, the petitioner sustained pain and sufferings and the Tribunal has not considered that aspect and not granted any compensation for pain and sufferings, transportation and extra nourishment and finally prayed the Court to grant reasonable compensation.

11. During the pendency of the appeal, it is represented by the learned counsel for appellant that respondent No.1 is not a necessary party.

12. The learned counsel appearing for the second respondent contended that the Tribunal after considering the evidence on record rightly awarded just and reasonable compensation and the said award needs no interference and therefore, prayed the Court to dismiss the appeal.

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

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

14. **POINTS:** A perusal of the evidence available on record shows that there is no dispute about the accident occurred on 02.10.2001, in which the petitioner sustained grievous injuries. According to PW.1 the driver of the lorry bearing No.APT.9831 drove the vehicle in a rash and negligent manner and dashed his cycle, due to which he fell down and received injuries. Further, the petitioner filed Ex.A1 copy of the First Information Report, which shows that the driver of the vehicle was rash and negligent. Therefore, the finding of the Tribunal that the accident was

caused due to rash and negligent driving of the lorry needs no interference.

15. Regarding the quantum of compensation is concerned, the learned counsel for the appellant contended that in the accident, the petitioner sustained two grievous injuries and initially admitted in the Government Hospital, Bodhan and from there shifted to Government Headquarters Hospital, Nizamabad, where PW.2 has given him treatment. It is no doubt as per Ex.A2-wound certificate, petitioner sustained grievous injuries and for the injuries, he took treatment in the Government Headquarters Hospital, Nizamabad. Ex.X1 clearly shows that fact. PW.2-doctor, who treated the petitioner, stated that the petitioner received grievous injuries. Considering all these aspects, the Tribunal rightly granted Rs.10,000/- for two grievous injuries, Rs.10,000/- towards medical expenditure and Rs.12,000/- towards loss of earnings. Therefore, the quantum of compensation passed by the Tribunal under the above heads needs no interference.

16. The learned counsel for the appellant contended that in view of two grievous injuries, the petitioner had undergone lot of pain and sufferings and the Tribunal has not considered that aspect. A perusal of the record shows that the Tribunal has not awarded any compensation under the head of pain and sufferings, transportation charges and extra nourishment. Therefore, in view of the injuries received by the petitioner, I am of the view that he shall be awarded Rs.5,000/- towards pain and sufferings, Rs.3,000/- towards transportation charges and Rs.5,000/- towards extra nourishment. Thus, the petitioner is entitled for a total amount of Rs.45,000/- (Rs.32,000/- + Rs.13,000/-).

17. As far as the rate of interest is concerned, in view of the different rate of interests granted by the Hon'ble Supreme Court in the decisions reported in ***Sanobanu Nazirbhai Mirza and others v. Ahmedabad***

Municipal Transport Service^[1] and ***Rebeka Minz and others v. Divisional Manager, United India Limited Insurance Company Limited and another***^[2], I am of the view that interest at 7.5% p.a shall be awarded on the enhanced amount from the date of appeal till the date of realisation.

18. In view of the above discussion, the appeal is partly allowed enhancing the compensation awarded by the Tribunal to the appellant/petitioner from Rs.32,000/- to Rs.45,000/- along with interest at 7.5% p.a on the enhanced amount from the date of appeal till the date of realisation. No order as to costs.

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

ANIS, J

Date: 24.07.2015
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^[1] 2013 ACJ 2733

^[2] 2012 ACJ 2328