

HON'BLE SMT JUSTICE ANIS

M.A.C.M.A.No.634 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 17.11.2004, passed by the Chairman, Motor Vehicle Accident Claims Tribunal-cum-VI Additional District Judge, (Fast Track Court), Nizamabad, in O.P.No.2071 of 2001, awarding compensation of Rs.34,000/-.

2. The appellant/petitioner filed the above O.P 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/-, on account of the injuries sustained by him in a motor vehicle accident that occurred on 19.11.2001.

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 19.11.2001 at about 5:00 a.m, when the petitioner was walking on the road from Vinayaknagar to Nizamabad and when he reached near Phulong bridge, a Tata Sumo Jeep bearing No.AP.25.G.4466, driven by its driver at high speed, came in a rash and negligent manner and dashed the petitioner and also one Hero Punch Motorcycle. Due to the accident, the petitioner fell down and received grievous injuries. Immediately after the accident, he was admitted in Pragathi Hospital, Nizamabad and there he was treated by Dr.T.Narsing Rao, operated thrice and rods were inserted. Due to fractures, the petitioner was unable to move from bed and also unable to do any work during the hospitalization period. Petitioner was working in a Stone polishing unit and earning Rs.10,000/- per month. Due to the injuries, he was unable to do any work, therefore prayed the Court to grant compensation against respondent Nos.1 & 2, who are the owner

and insurer of the vehicle i.e., Tata Sumo Jeep bearing No.AP.25.G.4466.

5. The first respondent though appeared through his counsel, has not filed any written statement and therefore, he was set *ex parte* on 05.06.2003.

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 also denied that the driver of the jeep was rash and negligent and was responsible for causing the accident. The second respondent also put the petitioner to prove that the driver of the jeep was having valid driving license at the time of accident and finally stated that the compensation claimed is very high and excessive and prayed the Court to dismiss the petition.

7. Basing on the above pleadings, the Tribunal framed four issues. To substantiate the claim, the petitioner got examined PWs.1 & 2 and got marked Exs.A.1 to A.13 on his behalf. On behalf of the contesting respondent, no oral evidence was adduced, but Ex.B1 Insurance Policy got marked by consent.

8. After considering the oral and documentary evidence, the Tribunal held that the accident was occurred due to rash and negligent driving of the driver of the Tata Sumo Jeep bearing No.AP.25.G.4466 and awarded compensation of Rs.34,000/- along with future 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 Tribunal having not considering the evidence of PW.2 and also

the disability suffered by the petitioner granted a meagre compensation; that the Tribunal also has not considered the monthly income of the petitioner as Rs.10,000/- p.m, but taken it as Rs.3,000/- p.m and finally prayed the Court to enhance the compensation awarded to the petitioner considering the grievous injuries received by him.

11. Appeal against respondent No.1 was dismissed for default vide C.O. dated 02.01.2012.

12. On the other hand, the learned counsel appearing for the second respondent argued that the Tribunal after considering the oral and documentary evidence rightly granted just and reasonable compensation to the petitioner and the findings of the Tribunal need no interference and prayed the Court to dismiss the petition.

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. **P O I N T S:** A perusal of the oral and documentary evidence available on record shows that there is no dispute about the fact that the accident occurred due to rash and negligent driving of the driver of Tata Sumo bearing No.AP.25.G.4466.

15. In so far, the quantum of compensation is concerned, in the accident the petitioner sustained grievous as well as simple injuries. Ex.A2 is the wound certificate. As per the wound certificate, the petitioner sustained (1) fracture of spine of tibia of left leg and (2) lacerated wound of 4 X 4 cms of occipital region. The petitioner was admitted in the hospital on 19.11.2001 and discharged on 25.11.2001.

Admittedly, the petitioner has not filed any disability certificate issued by the Medical Board. Further, he has also not filed any evidence showing that he was earning Rs.10,000/- p.m. A perusal of Ex.A2 wound certificate shows that the petitioner has sustained one grievous injury and one simple injury. Therefore, due to these injuries the petitioner might have suffered some inconvenience and during that period, he might not have been attended his work. A perusal of the order passed by the Tribunal shows that the Tribunal has awarded Rs.5,000/- for the fracture injury, Rs.1,000/- for the simple injury, Rs.10,000/- for the medical expenses and Rs.18,000/- for the loss of earnings. Therefore, in view of the facts and circumstances of the case,

I am of the view that an amount of Rs.5,000/- for the fracture injury, Rs.2,000/- for the simple injury and Rs.2,000/- for the loss of earnings shall be awarded in addition to the amount already awarded under these heads, and further an amount of Rs.3,000/- shall also be awarded under the head of extra nourishment and transportation. Thus, the petitioner is entitled for a total amount of Rs.46,000/- (Rs.10,000/- + Rs.3,000/- + Rs.10,000/- + Rs.20,000/- + Rs.3,000/-).

16. In view of the above discussion, the appeal is partly allowed enhancing the compensation awarded by the Tribunal to the appellant/petitioner from Rs.34,000/- to Rs.46,000/- along with interest at 7.5% p.a on the enhanced amount from the date of appeal till the date of realisation in view of the different rate of interest 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]. No order as to costs.

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

Date: 03.07.2015

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

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