

HON'BLE SMT JUSTICE ANIS

M.A. C.M.A. No.1380 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 03.03.2005, passed by the Chairman, Motor Vehicle Accident Claims Tribunal-cum-VII Additional District Judge (FTC), Nizamabad at Bodhan in M.V.O.P.No.269 of 1999, awarding compensation of Rs.20,000/-.

2. The appellant/petitioner filed the above M.V.O.P under Section 166 of the Act, claiming compensation of Rs.1,50,000/- for the injuries sustained by the petitioner in a motor vehicle accident, that occurred on 10.03.1999.

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 10-03-1999 at about 4 PM the petitioner was standing on the side of the road at Desaipet Village Shivar on Varni-Banswada road and at that time a tractor bearing No.APJ-5308 driven by its driver in a rash and negligent manner with high speed dashed against the petitioner, due to which, the petitioner fell down and front wheel of the tractor ran over the petitioner and the petitioner sustained fracture injuries to left leg foot, left leg four fingers and also injuries to right leg, head and other parts of the body. The petitioner was admitted in Government Hospital, Banswada and later shifted to Government Head Quarters Hospital, Nizamabad, wherein he was treated by P.W.2 and also Dr.T.Narsing Rao, Orthopaedic Surgeons. The petitioner spent Rs.80,000/- for the operation. It is also stated that due to injuries, the petitioner suffered permanent

disability and his future earnings and amenities were affected, Hence, he entitled for compensation for the loss of earnings, medical expenses, extra-nourishment, pain and suffering and for permanent disability and finally prayed the Court to grant compensation against both respondents i.e., owner and Insurance Company.

5. The brief averments made in the written statement filed by the 1st respondent are as follows :

The 1st respondent put the petitioner to prove the age, income and injuries sustained by him and the treatment taken in the Hospital. According to the 1st Respondent, the vehicle was driven by the approved licenced driver and it was insured with the 2nd Respondent under comprehensive policy and third party risk and in the event of any decree passed for compensation, it may be passed only against the 2nd Respondent.

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 accident and specifically stated that the accident was not reported by the 1st Respondent in collusion with the petitioner and the 2nd respondent is not aware of the criminal case pending. The amount of compensation claimed is highly excessive, arbitrary and out of all proportions and finally prayed to dismiss the petition.

7. Basing on the above pleadings, the Tribunal framed two issues and to substantiate the claim, the petitioner got examined himself as P.W.1 and examined P.W.2 and got marked Exs.A1 to A7 on his behalf. On behalf of respondent Nos.1 and 2, no oral

evidence was adduced, but Ex.B1 – copy of Insurance Policy was marked by consent and Ex.X1 – Case Sheet received from the Government Hospital was also marked.

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 Tractor bearing No.APJ-5308, resulting the injuries to the petitioner and awarded compensation of Rs.20,000/- 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 received two injuries and out of which one is simple injury and another is grievous injury. The Tribunal without considering the nature of injuries, granted meagre compensation of Rs.20,000/- and further the Tribunal has not granted any compensation towards pain and suffering, 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 this Court in Appeal Against Order No.3518 of 2004 clearly held not to act only on the evidence of P.W.2 and Dr.Narsinga Rao in awarding compensation and in view of the said judgment of this Court, the Tribunal considered Rs.20,000/- as reasonable compensation and hence, 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:** A perusal of the evidence shows that there is no dispute that the accident was occurred due to rash and negligent driving of the driver of the Tractor No.APJ 5308 and the petitioner sustained injuries. The petitioner examined himself as P.W.1 and deposed that in the accident he suffered fracture injuries and also simple injuries and he was admitted in the Government Hospital where P.W.2 and another Doctor treated him and issued Wound Certificate as well as the Disability Certificate. A perusal of the Wound Certificate – Ex.A3 shows that the petitioner sustained the following injuries :

1. Lacerated injury of $\frac{1}{2}$ " x $\frac{1}{2}$ " x $\frac{1}{4}$ " between 4th and 5th fingers of left foot – Grievous in nature.
2. Pain and tenderness 2" x 2" on back on LS region – Simple.

In view of the judgment of this Court, the evidence of P.W.2 and Disability Certificate cannot be taken into consideration, therefore, the Tribunal rightly held that the petitioner failed to prove that he suffered permanent disability and due to that he lost his future earnings. The fact remains that the petitioner received two injuries and he was treated as inpatient for about six days. For those injuries, the petitioner must have been suffered inconvenience and pain, therefore, an amount of Rs.3,000/- is awarded under the said head. Further, an amount of Rs.2,000/- is awarded towards extra-nourishment and other medical charges. Thus, the appellant is entitled for Rs.20,000/- + Rs.3,000/- + Rs.2,000/- = Rs.25,000/- and both the respondents are jointly and severally liable to pay the compensation awarded to the petitioner.

14. 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.

15. 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.

16. In the result, the Appeal is allowed in part, enhancing the compensation awarded by the Tribunal to the petitioner from Rs.20,000/- to Rs.25,000/- and on the enhancement amount of Rs.5,000/-, 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.

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

**ANIS,
J.**

Date: 15.07.2015

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^[1] 2013 ACJ 2733

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