

THE HON'BLE SMT. JUSTICE ANIS

M.A.C.M.A.No.1372 of 2005

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JUDGMENT

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the award dated 23.03.2005 passed in O.P.No.1390 of 2003 by the learned XI Additional Chief Judge, City Civil Court, Fast Track Court, Hyderabad, awarding compensation of Rs.86,500/- for the injuries sustained by the petitioner in a motor vehicle accident.

2. The appellant/petitioner filed the above Original Petition under Section 166 of the Act claiming compensation of Rs.2,50,000/- on account of the injuries sustained by him in a motor vehicle accident that occurred on 22.03.2003.

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 22.03.2003, while the petitioner was proceeding in an auto bearing No.AP 28 B 0411 from Pargi to Ibrahimpatnam and when it reached near Rangapalli gate, its driver drove the auto rashly and negligently, as a result of which, it turned turtle and the petitioner and another passenger were fell down and sustained injuries. The petitioner sustained fractures on his hand and leg. Immediately, the petitioner was shifted to Osmania General Hospital, Hyderabad, wherein he was treated as inpatient up to 09.05.2003 and during operation, his right hand was amputated resulting permanent disability. Petitioner stated that the police registered a case in Cr.No.59 of 2003 for the offence under Section 338 IPC against the driver of auto.

Petitioner also stated that he was aged 46 years at the time of accident and he was an agriculturist earning Rs.5,000/-per month and he prayed the Court to grant a compensation of Rs.2,50,000/- along with interest payable by respondents 1 and 2, who are the owner and insurer of the crime vehicle, jointly and severally.

5. The first respondent remained *ex parte*. The 2nd respondent filed counter stating that the petitioner has to prove the manner of accident, his age and income at the time of accident. He has to prove the injuries and the disability suffered by him and finally, prayed the Court to dismiss the petition.

6. Basing on the above pleadings, the Tribunal framed three issues. To substantiate the claim, the petitioner himself was examined as P.W.1 and also examined P.Ws.2 and 3 and marked Exs.P1 to P8. No evidence was adduced on behalf of the respondents, but Ex.R1-Copy of Policy was marked.

7. The Tribunal, after considering the evidence on record, held that the accident occurred due to rash and negligent driving of the driver of auto bearing No.AP 28 B 0411, due to which, the petitioner sustained injuries and awarded compensation of Rs.86,500/- with interest at 9% per annum from the date of the petition till realisation payable by respondents 1 and 2 jointly and severally. Dissatisfied with the quantum of compensation awarded by the Tribunal, the present appeal is preferred.

8. Learned counsel for the appellant argued that the Tribunal has not considered the evidence of P.W.1 in proper perspective and the disability suffered by him due to amputation of his right hand as per the disability certificate Ex.P4 and as the petitioner is not in a position to earn income, he prayed the Court to consider

the percentage of disability from 50% to 65% and enhance the compensation.

9. Even though notice was served on the second respondent, nobody appeared for it.

10. Having regard to the submissions made by the learned counsel for the petitioner, the points that arise for consideration are:

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

11. **Points 1 and 2:**

A perusal of the evidence of P.W.1 coupled with Ex.P1-copy of FIR and Exs.P6-copy of charge sheet, it is proved that the accident occurred due to rash and negligent driving of the driver of auto bearing No.AP 28 B 0411 and the petitioner sustained injuries.

12. Coming to the quantum of compensation, P.W.1 has specifically stated that he sustained grievous injuries and his right hand was also amputated. P.W.2-Doctor, who gave disability certificate-E.P4, stated that the petitioner suffered 65% disability. It is no doubt true, as per Ex.P4-disability certificate, the petitioner suffered 65% disability, but the Tribunal, without assigning any reasons has taken the disability of the petitioner at 50%. Since the right hand of the petitioner was amputated, his livelihood was effected. Therefore, considering the evidence of P.W.2 coupled with Ex.P4, the permanent disability of the petitioner has to be taken at 65% and thereby, the compensation comes to Rs.67,600/- ($1000 \times \frac{1}{3} \times 12 \times 13 = 1,04,000/- \times 65\% = 67,600/-$). The

compensation awarded by the Tribunal under the other heads shall remain unaltered. Thus, in total, the petitioner is entitled to a sum of Rs.1,02,100/-. Accordingly, the compensation awarded by the Tribunal is enhanced from Rs.86,500/- to Rs.1,02,100/-.

13. 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 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.

14. In view of the above discussion, the appeal is partly allowed enhancing the compensation awarded by the Tribunal to the appellant/petitioner from Rs.86,500/- to Rs.1,02,100/- 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.

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

ANIS, J

4th September, 2015
sj

^[1] 2013 ACJ 2733

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