

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.97 OF 2011

JUDGMENT:

The instant appeal is preferred, not satisfied with the award of Rs.30,000/- (Rupees thirty thousand) as against the claim of Rs.1,50,000/- (Rupees one lakh and fifty thousand) laid under Section - 166 of Motor Vehicles Act, 1988 (for short 'the Act'), by the order and decree, dated 17-04-2002, in M.V.O.P. No.196 of 2000, passed by the learned Chairman, Motor Accidents Claims Tribunal – cum – I Additional District Judge, Kadapa (for short 'the Tribunal'), seeking enhancement of compensation for the injuries sustained by the petitioner.

2. The appellant herein is petitioner in the O.P. before the Tribunal, while respondent Nos.1 and 2, who are owner and insurer of bus bearing registration No.AP 04T 0716, respectively, are respondent Nos.1 and 2, and respondent Nos.3 and 4, who are owner and insurer of Allwyn Lorry bearing registration No.AAD 770, respectively, are respondent Nos.3 and 4, respectively.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed in the O.P. before the Tribunal.

4. The facts, in brief, are that on 10-03-1997, the petitioner engaged an Allwyn lorry bearing registration No.ADD 770 on hire for transporting watermelons, and at 4.00 P.M., left from Bedusupalli to Kadapa, and when it was passing from Badvel to Sidhout main road within 4 KMs. distance from Sidhout, a bus bearing registration No.AP 04T 0716 driven at high speed in a rash and negligent manner came from behind and hit the allwyn lorry, due to which, it turned upside down, resulting injuries to the petitioner on his head, spinal cord and other parts of his person. He was shifted to Government Hospital, Kadapa for treatment. He claims that later he got treated in a private Nursing Home at

Atmakur, spending Rs.15,000/- towards medical expenses and extra nourishment and, therefore, sought to grant the aforesaid amount.

5. Respondent Nos.1 to 4 are the owners and insurers, respectively, of both vehicles. Respondent Nos.1 and 3, owners of respective vehicles, remained *ex parte* before the Tribunal.

6. Respondent No.2 filed counter and respondent No.4 filed memo adopting the counter of respondent No.2 since one and the same Insurance Company is insurer of both vehicles. They opposed the claim and the permanent disability set up by the petitioner.

7. Based on the pleadings, the Tribunal framed three issues about the responsibility for the accident. During inquiry before the Tribunal, petitioner, besides examining himself as PW.1, examined Dr. G. Venkata Subbaiah as PW.2, and marked Exs.A-1 to A-4. On behalf of the respondents, no witnesses were examined, but Ex.B-1, copy of insurance policy, was marked on consent.

8. The Tribunal, on appraisal of evidence, held issue No.1 in favour of petitioner observing that due to rash and negligent driving of the driver of bus belonging to the 1st respondent and insured with the 2nd respondent, the accident has occurred.

9. On issue No.2, basing on the description of injuries found in Ex.A-2, which is certified copy of wound certificate which are; i) lacerated wound on occipital region of head in vertical direction about 15 cm x 5 cm x 3 cm; ii) abrasion on the left side of head about 6 cm x 3 cm; and iii) complaining of pain on back in lumbar region, and the evidence of PW.2, but, however, appears to have not given any credence to Ex.A-4, which is disability certificate showing the percentage of disability on account of wedge compression fracture L-2 with

presence of forward displacement Grade-I, granted Rs.5,000/- towards the first and second injuries, which are simple in nature and for the third injury which is grievous one, Rs.20,000/- was granted and, thus, granted a total sum of Rs.30,000/- (though the amount comes to Rs.25,000/-) with interest at 12% per annum from the date of petition till the date of realization, by directing respondent Nos.1 and 2 to pay the entire amount within one month from the date of order, in case of failure, shall carry interest at 15% per annum thereafter, while dismissing the claim against respondent Nos.3 and 4.

10. It is the aforesaid order which is under challenge in the instant appeal preferred by the petitioner, contending in the grounds of appeal that the Tribunal has granted a meager amount and, therefore, sought to grant the balance amount.

11. Heard Sri K.G. Krishna Moorthy, learned counsel for the appellant – petitioner and Sri E. Venugopal Reddy, learned counsel for the 2nd respondent. Since the 3rd respondent refused to receive notice, it is deemed to have served on him. Respondent No.4, though, served, none appears for it. Respondent No.1, though, not served, makes no difference since remained *ex parte* before the Tribunal.

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12. Coming to the request in the instant appeal for seeking enhancement of compensation, when kept in view, the nature of injuries sustained by the petitioner, the amounts awarded by the Tribunal appear to be on lower side. Though, the order does not discuss about the Tribunal accepting 25% disability as shown in Ex.A-4, disability certificate, as the Tribunal ignored, in which case, it amounts to rejection of partial permanent disability spoken to by PW.2 as shown in Ex.A-4. The very fact that PW.2 is a private Medical Practitioner and not the member of Medical Board and Ex.A-4 was not issued by the Medical Board, and no elaboration is occurring as regards how the disability at 25% was assessed, are all the circumstances sufficient enough to hold that the Tribunal rightly did not take 25% disability into consideration.

13. Turning to the amounts granted by the Tribunal, a sum of Rs.5,000/- was granted towards two simple injuries as described in Ex.A-2 which are simple in nature and the same is on lower side and, therefore, the same is enhanced to Rs.15,000/-. So far as the grievous injury is concerned, the Tribunal granted Rs.20,000/-, but as seen from the nature of injuries, it reflects that there was tenderness over the L-2 vertebra , presence of kyphosis of spinal cord restricting the forward bending and presence of wastage of paraspinal, and the X-ray would show, wedge compression fracture L-2 with presence of forward displacement Grade-I. In such an event, even looking at the temporary disability suffered by the petitioner, the same is enhanced to Rs.30,000/- towards grievous injury. In view of the nature of injuries which the petitioner suffered and the sufferance he has undergone, Rs.15,000/- is granted towards pain and suffering.

14. The Tribunal has not granted any amount towards extra nourishment, therefore, a sum of Rs.5,000/- is granted. Towards attendant charges and transportation, a sum of Rs.5,000/- is granted. Thus, in all, the petitioner is entitled to Rs.70,000/- as against Rs.30,000/- granted by the Tribunal. Concerning interest, the Tribunal granted the same at 12% per annum, but the same is reduced to 7.5% per annum as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**.

15. In the result, appeal is allowed in part, and the order and decree, dated 17-04-2002, in M.V.O.P. No.196 of 2000, passed by the Tribunal are modified, enhancing the compensation to Rs.70,000/- (Rupees seventy thousand) from Rs.30,000/-(Rupees thirty thousand) with interest thereon at 7.5% per annum from the date of petition till realization. There shall be no order as to costs.

16. As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

March 27, 2015.

Mgr