

HON'BLE SRI JUSTICE A. SHANKAR

NARAYANA

M.A.C.M.A. No.1144 OF 2005

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JUDGMENT:

Not satisfied with the award of Rs.3,88,820/-(Rupees three lakhs eighty eight thousand eight hundred and twenty only) for the injuries sustained by the petitioner as against Rs.6,50,000/- (Rupees six lakhs and fifty thousand only) claimed under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') read with rule 455 of the Andhra Pradesh Motor Vehicles Rules, 1989 (for short 'the Rules') granted by the learned Chairman, Motor Accidents Claims Tribunal – cum – Additional District Judge, Vizianagaram (for short 'the Tribunal') by order, dated 05-04-2004, in O.P. No.143 of 2003, the instant appeal is preferred under Section 173 of the Act, seeking enhancement.

2. The appellant herein is the petitioner, in the O.P. before the Tribunal, while respondent Nos.1 and 2, who are owner and insurer of Car bearing registration No.OR 10 7160, respectively, are respondent Nos.1 and 2, respectively.

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 10-10-2002, the petitioner started on his motor cycle to go to Salur and when he reached near Komatipalli S.C. Colony junction at about 9.00 a.m., a car bearing registration No.OR 10 7160 coming in opposite direction driven by its driver at high speed in a rash and negligent manner,

hit the motor cycle, due to which, the petitioner sustained multiple injuries and, initially he was taken to Government Hospital, Salur and from there he was referred to Government Head-quarters Hospital, Vizianagaram. Later, he was referred to K.G.Hospital, Visakhapatnam and also taken treatment in various other hospitals. Therefore, he sought a sum of Rs.6,50,000/- as compensation against respondent Nos.1 and 2, who are owner and insurer of the car respectively.

5. Respondent No.1, owner of the vehicle, remained *ex parte* before the Tribunal.

6. Respondent No.2 – Insurance Company, filed counter opposing the claim by raising various pleas.

7. Based on the pleadings, the Tribunal framed three issues about fixing responsibility for the accident. During inquiry, on behalf of the petitioner, besides examining himself as PW.1, also examined one Mr.L. Ramulappadu, Junior Assistant in Mandal Revenue Office as PW.2 to speak about the sanction of leave availed by the petitioner and non-reimbursement of medical claim etc., and one Dr.B. Uday Kumar as PW.3 to speak about the treatment which the petitioner has undergone and the injuries sustained by him, and marked Exs.A-1 to A-11, and also Ex.X-1, case sheet, maintained in K.G. Hospital, Visakhapatnam. On behalf of the contesting respondent, neither oral nor documentary evidence was let in.

8. The Tribunal, on appraisal of evidence on record, held issue No.1 in favour of the petitioner. On issue No.2, the Tribunal, as against the amount of Rs.6,50,000/- sought by the petitioner,

granted a sum of Rs.61,200/- towards loss of leave for the period from 10-10-2002 to 30-04-2003 basing on evidence of PW.2 and the leave sanction certificates were marked as Exs.A-7 and A-8; Rs.82,620/- towards loss of earnings; Rs.1,00,000/- towards permanent disability, since evidence of PW.3 shows that the petitioner suffered 60% partial permanent disability; Rs.25,000/- towards pain and suffering and loss of amenities of life as against the claim of Rs.50,000/-; Rs.1,20,000/- towards medical expenses, extra nourishment and transport charges basing on documentary evidence through Exs.A-6 and A-9 and, thus, a total sum of Rs.3,88,820/- was granted as compensation with interest at 9% per annum.

9. Seeking enhancement of compensation, the instant appeal is preferred by the petitioner contending in the grounds of appeal, that the Tribunal did not properly appreciate the evidence on record and the petitioner underwent operations at Nagapur and Visakhapatnam and the Tribunal granted a meager amount towards partial permanent disability and, therefore, sought to grant balance amount.

10. Heard Sri Jayanti S.C. Sekhar, learned counsel for the appellant – petitioner. Despite service of notices on respondent Nos.1 and 2, none appears for the owner and insurer.

11. Perused the order and the evidence let in by the petitioner. Admittedly, no witnesses were examined on behalf of the contesting 2nd respondent and no documents were filed.

12. Now, turning to the amount of Rs.61,200/- granted by the Tribunal towards loss of leave for the period from 10-10-2002

to 30-04-2003 is concerned, the same is confirmed, as it is based on evidence of PW.2 and Exs.A-7 and A-8. Concerning the amount of Rs.82,620/- towards loss of earnings, the Tribunal basing on evidence of PWs.2 and 3, granted the said amount, which is also confirmed as it does not require any enhancement.

13. Concerning 60% disability, though, the Tribunal considered the same as partial and permanent referring to Exs.A-1 and A-11 - disability certificates, which reflect that the petitioner was not in a position to squat or walk without any support and that he cannot move even without help of crutches, the treatment he has undergone and the nature of injuries being fracture of right thigh and right leg; fracture of right femur, third part segmental fracture femur, fracture of patella, fracture upper 1/3rd of both bones of right leg as reflected in the evidence of PW.3. The Tribunal, instead of applying formula, somehow, granted a sum of Rs.1,00,000/- towards permanent disability. Be that as it may, the said amount, when kept in view, the sufferance undergone by the petitioner, the treatment he has taken at K.G.Hospital, Visakhapatnam and also at Nagpur, as his evidence shows that he had undergone treatment even at Chandak Nursing Home, Nagpur and keeping in view, that the petitioner was advised to take further treatment for one year and since the Medical Board, Visakhapatnam issued certificate under Ex.A-11 assessing the disability of petitioner at 60% as partial and permanent, the petitioner is awarded a sum of Rs.2,00,000/- without going into the multiplier method for determination of compensation.

14. Concerning the amount of Rs.25,000/- granted by the Tribunal towards pain and suffering and loss of amenities of life,

the petitioner requested for grant of Rs.50,000/- and the same is acceded to enhancing the amount granted by the Tribunal from Rs.25,000/- to Rs.50,000/- under the said head. The Tribunal has granted a sum of Rs.1,20,000/- towards medical expenses including extra nourishment and transport charges, and the relevant documents were also filed which were discussed by the Tribunal in paragraph No.10 of the order. Though, the petitioner claimed

a sum of Rs.3,00,000/- under the said head, he has not substantiated the same with documentary proof. Be that as it may, the amount of Rs.1,20,000/- granted by the Tribunal is construed as the amount towards medical expenses. So, towards transport charges, the petitioner is entitled to a sum of Rs.20,000/-, since he has taken treatment even at Nagpur, initially at K.G.Hospital, Visakhapatnam, the details of which have been narrated by the Tribunal in paragraph Nos.9 and 10 of the order which needs no advertence once again. Towards extra nourishment, a sum of Rs.20,000/- is granted. The petitioner, in fact, must have engaged an attendant as spoken to by him in his evidence. When kept in view, the petitioner must have engaged an attendant at least for a period of one year, for which, he is entitled to a sum of Rs.24,000/- @ Rs.2,000/- per month and, accordingly, the same is granted. Thus, in all, the petitioner is entitled to Rs.5,77,820/- (Rupees five lakhs seventy seven thousand eight hundred and twenty only) as against the amount of Rs.3,88,820/- granted by the Tribunal. The rate of interest at 9% granted by the Tribunal is reduced to 7.5% as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**^[1].

15. In the result, the appeal is allowed in part, and the order and decree, dated 05-04-2004, in O.P. No.143 of 2003, passed by the Tribunal are modified, enhancing the compensation to Rs.5,77,820/- (Rupees five lakhs seventy seven thousand eight hundred and twenty only) from Rs.3,88,820/- with interest thereon at the rate of 7.5% 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

February 24, 2015.

Mgr

[\[1\]](#). 2013 ACJ 1403