

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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M.A.C.M.A.No.548 of 2005

JUDGMENT:

Dissatisfied with the amount of Rs.10,000/- awarded as compensation with interest at 9% per annum by the order dated 21.09.2004 in O.P.No.75 of 2000 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Nizamabad (for short, 'the Tribunal') as against the claim of Rs.1,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), the petitioner preferred the instant appeal.

2. The appellant herein is the petitioner, while the respondent Nos.1 and 2, who are the owner and insurer of the lorry bearing No.AP-12-T-6759 respectively, were respondents in the original petition.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts in brief are that on 20.12.1999 at about 07.30 PM, while the petitioner was proceeding on foot from Naseerabad to his residence and reached bus stand on Bhainsa to Nirmal road, the lorry bearing No.AP-12-T-6759, being driven by its driver in a rash and negligent manner and at high speed dashed the petitioner, due to which, he fell down and sustained injuries on his head and other parts of the body. He was immediately shifted to Government Hospital, Narsapur and thereafter, he was referred to Government Hospital, Nizamabad and he was treated by a team of doctors and his left hand was operated. He sought Rs.1,00,000/- having laid the claim under Section 166 of the Act.

5. The 1st respondent-owner of the vehicle remained *ex parte* before the Tribunal and the 2nd respondent-Insurance Company opposed the claim.

6. Basing on the above pleadings, the Tribunal framed three issues

about the responsibility for the accident. During enquiry, the petitioner himself was examined as P.W.1 besides examining Dr. L.Ramulu as PW.2 and marked Exs.A.1 to A.6. On behalf of the 2nd respondent- Insurance Company, no witnesses were examined, but a copy of policy was marked as Ex.B.1.

7. The Tribunal, on appraisal of evidence on record both, oral and documentary, let in by the petitioner, held issue No.1 in favour of the petitioner holding that due to rash and negligent driving of the lorry driver, the accident had occurred resulting in injuries to the petitioner. On issue No.2, basing on description of injuries shown in Ex.A.2 issued by the Government Medical Officer, Narsapur, Adilabad District the Tribunal discarded the evidence of PW.2 and excluded Ex.A.6 by making certain observations in Para '8' of the order and also excluded Ex.A.4 for the reason that the Doctor who issued Ex.A.4 by name G. Venkatram Reddy was not examined to prove the fractures sustained by the petitioner. Even no X-ray was furnished and the charge sheet filed by the police would show that the offence punishable under Section 337 IPC was charged against the lorry driver. Thus, the Tribunal awarded a sum of Rs.2,000/- towards cut injury on the left upper arm, Rs.4,000/- towards cut injury on the head, Rs.1,000/- towards the abrasion on the left leg and big toe under the head injuries and Rs.2,000/- towards pain and suffering and, thus, awarded a sum of Rs.10,000/- as compensation.

8. Aggrieved of the said order, the instant appeal is preferred contending in the grounds of appeal that the Tribunal did not properly appreciate the evidence let in by the petitioner through PW.2, and some how, disbelieved the evidence of PW.2 and discarded Ex.A.6 and, hence, sought to grant balance of amount of Rs.90,000/- with interest @ 12% per annum.

9. Heard Sri P. Radhive Reddy, learned counsel for the appellant, Ms. I.Maamu Vani, learned counsel for the 2nd respondent and none appeared for the 1st respondent.

10. Perused the order and oral and documentary evidence let in by the petitioner through PW.2, Exs.A.1 to A.6. The finding recorded by the Tribunal in excluding Ex.A.4 for non-examination of Dr. G.Venkatram Reddy, cannot be found fault. Even the finding recorded by the Tribunal in discarding Ex.A.6-disability certificate issued by PW.2 in view of the observation made in Para '8' of the order touching the conduct of PW.2 cannot also be found fault. Therefore, the Tribunal left with no option had to award compensation basing on the injuries found in Ex.A2 i.e., one cut injury to left upper arm, another cut injury on the head on occipital region and abrasion on the left thigh and left big toe. It is no doubt true that the injuries are described as simple, but, however, the Assistant Civil Surgeon who issued Ex.A.2 has referred the petitioner to Government Hospital, Nirmal for further treatment and, thus, Ex.A2 reflects that first aid alone was given on 20.12.1999, on which day the petitioner was admitted in Government Hospital, Narsapur. Certainly, the petitioner has suffered some inconvenience in view of the injuries. Therefore, it is just and reasonable to enhance the amount from Rs.10,000/- to Rs.15,000/- which would meet the norm of just and adequate compensation, with interest at 7.5% per annum as per the decision of the Hon'ble Apex Court in ***Rajesh and others v. Rajbir Singh and others***^[1].

11. In the result, the appeal is allowed in part and the award and decree dated 21.09.2004 passed by the Tribunal in O.P.No.75 of 2000 is modified, enhancing the compensation to Rs.15,000/- from Rs.10,000/-, with interest at the rate of 9% per annum on the amount of Rs.10,000/- granted by the Tribunal and at 7.5% per annum on the enhanced amount of Rs.5,000/- from the date of petition till realization. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

Date: 04.02.2015.
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