

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.918 OF 2005

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JUDGMENT:

Dissatisfied with the award of Rs.23,000/- (Rupees twenty three thousand only) granted as compensation for the injuries sustained by the petitioner as against the claim for Rs.1,00,000/- (Rupees one lakh only) laid under Sections 163-A and 166 of the Motor Vehicles Act, 1988 (for short 'the Act') and Rules 455 and 476 of Andhra Pradesh Motor Vehicles Rules, 1989, by order and decree, dated 11-01-2005, in M.V.O.P. No.449 of 2003, passed by the learned Chairman, Motor Accidents Claims Tribunal – cum – IX Additional District Judge, Guntur (for short 'the Tribunal'), the instant appeal is preferred by the appellant under Section 173 of the Act.

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 lorry bearing registration No.AP 21U 3639, 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 28-03-2003 at about 6.00 P.M., the petitioner was travelling in lorry bearing registration No.AP 21U 3639 as cleaner from Y. Palem to Macherla, and when it reached near R & B Bungalow in Veldurthi village, the driver of the lorry, having found some sheep moving across the road, slowed down it and instructed the petitioner to drive away them. While the petitioner was getting down from the lorry to drive away the sheep from the road, the driver negligently moved the vehicle, due to which, he fell down and the front side tire of the lorry ran over him, resulting fracture to his right leg. The petitioner was immediately shifted to Government General

Hospital, Guntur. Therefore, he sought a sum of Rs.1,00,000/- as compensation against the respondents being owner and insurer of the lorry.

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

6. Respondent No.2 filed counter opposing the claim.

7. The Tribunal framed three issues basing on the above pleadings. During inquiry, on behalf of the petitioner, he examined himself as PW.1 and marked Exs.A-1 to A-3 and also got marked Ex.X-1, case sheet produced from Government General Hospital, Guntur. On behalf of the contesting respondent, neither oral nor documentary evidence was let in.

8. The Tribunal, on appraisal of evidence on record let in by the petitioner, held issue No.1 in favour of the petitioner. On issue No.2, having found that the petitioner was treated as in-patient for about 20 days in the Hospital and Ex.A-2- certified copy of wound certificate, so also Ex.X-1 – case sheet reflects that he sustained dislocation and fracture to calcaneus which injury was found sutured in case sheet measuring 40 x 2 cm. extending lower 2/3rd medial side of right leg into medial side of foot up to great toe and thereby granted a sum of Rs.10,000/- towards fracture; Rs.8,000/- towards temporary loss of income and Rs.5,000/- towards medical expenses and, thus, a total sum of Rs.23,000/- was granted as compensation with interest at 9% per annum.

9. It is that order which is challenged in the instant appeal seeking enhancement contending in the grounds of appeal that the Tribunal ought to have awarded a total compensation of Rs.1,00,000/- by taking into consideration, the evidence of PW.1 and Exs.A-1 to A-3 and Ex.X-1.

10. Heard Sri B. Parameswara Rao, learned counsel for the appellant - petitioner, and Mrs. A. Jayanthi, learned counsel for the 2nd respondent – Insurance Company. It is mentioned in the cause title that the 1st respondent, owner of the vehicle, is not necessary party to this appeal.

11. Perused the order and the oral and documentary evidence let in by the petitioner. A perusal of Ex.A-2 and Ex.X-1 would show that the petitioner was treated in Government Hospital, Guntur for the injury of 40 x 2 cm. extending lower 2/3rd medial side of right leg into medial side of foot up to great toe and X-ray taken there-for would reveal that the right leg and right foot midtarsal dislocation and fracture calcaneus and he was admitted on 29-03-2003 and discharged on 15-04-2003 and underwent closed reduction and POP application. In that view of the matter, certainly, the petitioner is entitled to Rs.15,000/- as against Rs.10,000/- granted by the Tribunal towards fracture, and towards loss of temporary income, even taking at the rate of Rs.2,000/- per month, he is entitled to Rs.12,000/- as against Rs.8,000/- granted by the Tribunal, and towards medical expenses, of course, though, no medical bills were produced, the Tribunal granted Rs.5,000/-. But, however, towards extra nourishment, a sum of Rs.5,000/- is granted and, thus, the petitioner is additionally entitled to Rs.14,000/- and, thus, making a total Rs.37,000/- to which the petitioner is entitled as compensation as against the amount of Rs.23,000/- granted by the Tribunal. Concerning the interest at 9% per annum awarded by the Tribunal, the same is reduced to 7.5% per annum on Rs.37,000/- from the date of petition till the date of realization as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**.

12. In the result, the appeal is allowed in part, and the order and decree, dated 11-01-2005, in M.V.O.P. No.449 of 2003, passed by the Tribunal are modified, enhancing the compensation to Rs.37,000/- (Rupees thirty seven thousand only) from Rs.23,000/-with interest thereon at the rate of 7.5% from the date of petition till realization. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

February 12, 2015.

Mgr