

HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

M.A.C.M.A.Nos.779 and 1011 of 2005

COMMON JUDGMENT:

These two appeals arise out of one and the same accident in which the petitioners, in both the O.P.Nos.312 and 313 of 2003, sustained injuries. Dissatisfied with the amounts granted by the learned Chairman, Motor Accidents Claims Tribunal – cum- III Additional District Judge (Fast Track Court), Ranga Reddy District, in the aforesaid O.Ps., dated 05.01.2005, of Rs.29,850/- and Rs.39,090/- respectively, as against the claims laid by each of them for Rs.1.00 lakh, under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), the instant appeals are preferred.

For convenience sake, the parties are hereinafter referred to as they were arrayed before the Tribunal in the O.Ps.

Facts, in brief, are that, on 09.04.2003 at about 1.20 p.m, while both the petitioners were proceeding towards Kallakal Village having got down from an auto, a car bearing No. AP 1C 5669 owned by the first respondent, driven by its driver at a high speed in a rash and negligent manner, dashed them, due to which, they sustained fractures; they were immediately shifted to CHC Gajwel Hospital; and, later, to People's Hospital, Kukatpally, Ranga Reddy District. The Gajwel police registered a case in Crime No.103 of 2003 initially, under Section 337 IPC against the driver of the auto; and, later, filed charge sheet.

The petitioners claim that, due to the injuries sustained by them, they were unable to attend the normal duties besides injuries affecting their earning capacity; they have spent huge amount towards medical expenses; and, therefore, they sought Rs.1.00 lakh each quantifying them at Rs.30,000/- towards special damages, and Rs.70,000/- towards general damages.

First respondent remained *ex parte*. The second respondent – Insurance Company opposed the claim raising various pleas and contended that the claims have been laid in collusion with the first respondent, and sought to dismiss the claim petitions. Three identical issues were framed by the Tribunal about the responsibility for the accident.

During enquiry in the O.P. in the former appeal, the petitioner, besides examining herself as PW.1, also examined the doctor as PW.2 and marked Exs.A.1 to A.11. While no evidence was adduced on behalf of the respondents, a copy of the insurance policy was marked as Ex.B.1 with consent. In the latter case, the petitioner examined himself as PW.1, and examined the very same doctor as PW.2, and marked Exs.A.1 to A.12. The second respondent got a copy of the insurance policy marked as Ex.B.1.

The Tribunal disposed of both the petitions by separate orders despite disposing of them on one and the same day. On issue No.1, the Tribunal found favour with the petitioners. On issue Nos.2 and 3, the Tribunal recorded a finding that the vehicle was insured with the second respondent; the

insurance policy was in force on the date of the accident; and granted a sum of Rs.18,000/- towards multiple fractures to the left leg and pain and suffering, Rs.2,000/- towards loss of earnings and Rs.9,680/- towards medical expenses, making a total of Rs.29,850/- as compensation in the former O.P; whereas, in the latter O.P, while granting similar amounts for multiple fractures and pain and suffering and towards loss of earnings but, towards medical expenses, a sum of Rs.15,090/- was granted, making a total of Rs.35,090/- as compensation.

Heard Sri K.Venkat Ram Reddy, learned Counsel for the appellants, and Sri P.Harinadh Gupta, learned Standing Counsel for the second respondent – Insurance Company.

The appeals against the first respondent (owner of the accident vehicle) were dismissed for default on 02.01.2012 and 03.01.2012 respectively. However, dismissal of the appeals for default against the first respondent is of no consequence to decide the quantum of compensation, in view of the decision of a Division Bench of this Court in Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma^[1], wherein it is held that:

"If the Claims Tribunal records a finding that the accident had taken place due to the rash or negligent driving of the driver of the motor vehicle and if such finding is not challenged either by the Insurance Company or by the owner of the motor vehicle, the question that arises in appeal filed against the orders of the Tribunal by the claimants is only with regard to the determination of just, fair and reasonable quantum of compensation and therefore there cannot be any bar to

decide the quantum of compensation against the Insurance Company even in the absence of owner of the vehicle to the extent of the statutory liability of the Insurance Company. But the quantum of compensation cannot be decided over and above the statutory liability of the Insurance Company in the absence of the owners, but the question of the statutory liability of the Insurance Company survives for consideration at the appellate stage."

The common question that arises for consideration in both these appeals is whether the appellants are entitled to enhancement; and, if so, to what amount?

A perusal of Ex.A.2, wound certificate, would show that the petitioner, in the former appeal, sustained incised wound on the left cheek and contusion on the left knee and also on the left leg. PW.2 was the doctor who examined in an attempt to substantiate the stand of the petitioner that she sustained partial permanent disability. It is no doubt true, PW.2 stated that the petitioner sustained 20% disability but the Tribunal had rightly discarded the same by recording a finding that he was not competent to speak about disability. The above finding recorded by the Tribunal is well-reasoned and well-appreciated for the reason that the disability certificate is not at all forthcoming. Even otherwise, PW.2's evidence would show that he has not elaborated 20% disability.

Ex.A.2 is the wound certificate. Ex.A.5 is the discharge card which also shows that there were fractures on left knee and fracture of both bones of left leg. So far as the

appellant, in the former appeal, is concerned, she was treated as an inpatient for about 9 days. The Tribunal has granted Rs.2,000/- towards loss of earnings for one month construing the petitioner as an agricultural labourer and, as a result of fracture of both bones of left leg, she could not have attended to normal duties for a period of one month. It is no doubt true, that the fracture causes temporary disability but when there was fracture of both bones of left leg, which is one of the main limbs, to resume the occupation of women labour, certainly, it would take six months. Therefore, she is entitled to a sum of Rs.12,000/- towards temporary loss of earnings. Concerning the amount of Rs.18,000/- granted towards pain and suffering, viewed from any angle, certainly, it stands on lower side since there was fracture of both bones of left leg besides other injuries in which case, the petitioner is entitled to a sum of Rs.35,000/-. This apart, the petitioner is entitled to a sum of Rs.5,000/- towards extra nourishment keeping in view, the nature of injuries she sustained, and a sum of Rs.5,000/- towards attendant and transport charges besides the medical expenses of Rs.9,680/- awarded by the Tribunal. Thus, the appellant, in the former appeal, is entitled to Rs.66,680/-.

Concerning the appellant, in the latter appeal, who is the husband of the appellant in the former appeal, on the same lines, he is also entitled to a sum of Rs.35,000/- towards pain and suffering since Ex.A.5, discharge card, would disclose that he sustained fractures on right leg and

also on the right ankle and was treated as an inpatient for 11 days. Thus, keeping in view the same, he is entitled to Rs.35,000/- towards pain and suffering as against Rs.18,000/- awarded by the Tribunal; Rs.10,000/- towards loss of earnings as against Rs.2,000/- awarded by the Tribunal; a sum of Rs.5,000/- towards extra nourishment; and a sum of Rs.5,000/- towards attendant and transport charges besides Rs.17,090/- awarded towards medical bills by the Tribunal. Thus, the appellant, in the latter appeal, is entitled to Rs.72,090/-.

Thus, the appellant in the former appeal is entitled to a sum of Rs.66,680/- as against Rs.29,850/-; and the appellant, in the latter appeal, is entitled to a sum of Rs.72,090/- as against Rs.39,090/- granted by the Tribunal towards compensation. The awarded amount shall carry interest at 7.5% p.a. in view of the decision of the Supreme Court in [Rajesh v. Rajbir Singh](#)^[2].

The Appeals are, thus, allowed in part. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand disposed of.

A.SHANKAR NARAYANA,J

Date: 09.03.2015
usd

[\[1\]](#) 2001(1) ALT 495 (D.B.)

[\[2\]](#) 2013 ACJ 1403