

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A. C.M.A. No.1442 OF 2006

JUDGMENT:

Dissatisfied with the award of Rs.34,785/- towards compensation as against the claim of Rs.1,00,000/-, laid under Section 166 of the Motor Vehicles Act, 1988, seeking enhancement of the same, petitioner preferred this Civil Miscellaneous Appeal against the order and decree, dated 28-03-2006, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - IV Additional District Judge, Warangal, in O.P. No.972 of 2006.

2. The appellant herein is the petitioner (claimant) in the O.P. before the Tribunal, while respondent Nos.1 to 3, who are driver, owner and insurer, respectively, of the motorcycle bearing No.AP-36-H-5166, are respondent Nos.1 to 3, respectively.

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

4. The facts, in brief, are that on 07-01-2005, at about 5-00 p.m., while the petitioner was moving on foot, motorcycle bearing No.AP-36-H-5166 driven in a rash and negligent manner at high speed, came in the opposite direction and hit him, due to which he sustained serious injuries, and, immediately, he was taken to Government Civil Hospital, Narsampet, and later he was shifted to Laxmi Orthopaedic Hospital and Trauma Centre at Narsampet. He claims that he has spent Rs.10,000/- for his treatment and he did

not completely recover from the injuries and suffering from permanent disability. Even a case in Crime No.3 of 2005 was registered against the 1st respondent, driver of the motorcycle, by the concerned police and charge-sheet was laid on the file of Judicial Magistrate of First Class, Narsampet. Hence, the petitioner laid the claim against respondent Nos.1 to 3.

5. Before the Tribunal, respondent Nos.1 and 2, who are driver and owner of the motorcycle involved in the accident, remained *ex parte*.

6. Respondent No.3, insurer of the motorcycle, opposed the claim raising various pleas requiring the petitioner to prove the allegations while seeking to dismiss the claim petition.

7. The Tribunal framed three (3) issues about the responsibility for the accident. During enquiry, the petitioner examined himself as PW.1 and also examined Dr. K. Ravi Kiran, who treated him, as PW.2 and one Dr. P. Kali Prasad Rao as PW.3, who has issued Ex.A-8 disability certificate. On behalf of the respondents, no witnesses were examined and no documents were filed.

8. The Tribunal, on appraisal of evidence of PW.1, supported by Exs.A-1 and A-3, attested copies of F.I.R. and medical certificate, held issue No.1 in favour of the petitioner. On issue No.2, elaborately discussing the evidence of PWs.2 and 3, granted Rs.4,535/- towards medical expenses, Rs.250/- towards transportation, Rs.5,000/- towards pain and suffering and Rs.25,000/- towards temporary disability, discomfort as well as inconvenience, which the petitioner has to face with its effects on his person through out his life and, thus, granted a total sum of Rs.34,785/-.

9. Aggrieved of the aforesaid order, the petitioner preferred the instant appeal seeking enhancement of compensation on the ground that the Tribunal did not properly appreciate the evidence of PWs.1 to 3 and despite suffering fracture injury to right knee, a meagre amount was granted, and, therefore, sought to grant the balance amount.

10. Heard Sri M. Madhava Reddy, learned counsel for the petitioner (appellant).

11. There is no representation for respondent No.3, insurer of the motorcycle involved in the accident. Despite service of notice, none appears for respondent No.2, owner of the motorcycle. It was recorded in the cause title of the grounds of appeal that respondent No.1, driver of the motorcycle, is not a necessary party to this appeal.

12. Perused the order and the evidence on record, both, oral and documentary, let in by the petitioner.

13. The short question that arises for consideration is whether the amount granted by the Tribunal is just and adequate?

14. The doctor, who treated PW.1, is examined as PW.2. His evidence shows that the petitioner suffered tibial spine fracture with hemothoraces and by surgical intervention, blood was removed from the knee and plaster of paris was applied on the same day the petitioner was discharged on 09-01-2005, and, thus, PW.2 was advised to come after eight (8) days for check up. He was also advised to take rest for 32 days besides advising knee-bending exercises. What was spoken to by PW.2 is reflected from Exs.C-1 and C-2 as well as Exs.A-1 and A-7. Of course, nothing is brought out in his cross-examination as to the nature of injuries he has spoken to

except to the extent of fracture being united after treatment and that the petitioner attended to his hospital three or four months for treatment.

15. Concerning disability, the Tribunal recorded a finding discarding it holding that the evidence of PW.3 and the disability certificate Ex.A-8 would show that it was not issued for judicial purpose and PW.3 has given a positive admission in his cross-examination. That has been the reason, the Tribunal has granted Rs.25,000/- towards temporary disability, discomfort as well as inconvenience, which the petitioner had to face.

16. Be that as it may, the disability sustained by the petitioner was, though, temporary, since he was advised rest for 40 days for the fracture of tibial spine, fracture with hemothoraces and even blood was also removed from the knee, the amount of Rs.25,000/- granted by the Tribunal can be enhanced to Rs.50,000/- put together, which includes temporary loss of earnings and the discomfort he has faced and also the extra-nourishment and attendant charges.

17. Concerning transportation charges, a sum of Rs.250/- is granted by the Tribunal and the same is enhanced to Rs.1,000/-, as claimed by the petitioner. The amount of Rs.4,535/- granted by the Tribunal towards medical expenses is not disturbed as the same is based on Exs.C-1 and A-7 contents. Towards pain and suffering, the Tribunal has granted Rs.5,000/- and the same is enhanced to Rs.10,000/-.

18. Thus, the petitioner is entitled to a total compensation of Rs.65,535/- (Rupees sixty five thousand and five hundred and thirty five) as against Rs.34,785/- awarded by the Tribunal, and the same is accordingly granted, with interest at 7.5% per annum, on the entire

compensation, as against 9% granted by the Tribunal, from the date of petition till realisation, as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**.

19. Accordingly, the Civil Miscellaneous Appeal is allowed in part modifying the impugned award passed by the Tribunal, by enhancing the compensation and reducing the rate of interest, as indicated above. There shall be no order as to costs.

20. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal stand disposed of.

A. SHANKAR NARAYANA, J

March 9, 2015.

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