

**HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

**MACMA No. 684 of 2005**

**Judgment:**

Having got dissatisfied with the award of Rs.1,49,596/- as compensation, by the order, dated 18<sup>th</sup> December 2004, in OP No. 40 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Adilabad (for short 'the Tribunal'), as against the claim for Rs.4,50,000/- laid under Sections 166(1) and 163-A of the Motor Vehicles Act, 1988 (for short 'the Act') read with Rule 455 of the Andhra Pradesh Motor Vehicles Rules, 1989, the instant appeal is preferred by the petitioner seeking enhancement of compensation.

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the Original Petition before the Tribunal.

3. The facts, in brief, are that on 16.10.1999, the petitioner along with the fifth respondent and one Pankaj went to Nagpur in Maruthi Zen Car bearing registration No.MH-31-AG-650 from Adilabad in order to drop the fifth respondent and Pankaj who were going to Rajkot by train. After their departure, the fourth respondent – driver of the Maruthi Zen Car started driving from Nagpur to Adilabad. He was sitting by the side of the fourth respondent in the front seat. On the way, when they reached near Bhuti Bori area, the fourth respondent dashed a lorry bearing registration No.MH-31-W-3581, which was stationed on the road without indicating indicators, from its back side. The first respondent who was the driver of the said lorry parked the said lorry on the road in the night time without giving any indicators. Due to the impact, the Maruthi Zen Car was completely damaged and the petitioner and the fourth respondent received injuries, they became unconscious on the spot. The Head Constable of Bhuti Bori Police Station shifted them to Gandhi Medical

Hospital, Nagpur, where the petitioner and the fourth respondent were given treatment. Thereafter, they were shifted to Central India Institute of Medical Sciences, Nagpur. Even a case in Crime No.225 of 1999 of Bhuti Bori Police Station, was registered against the respondents 1 and 4. The respondents 1 to 3 are the driver, owner and insurer of the lorry and the respondents 4 to 6 are the driver, owner and insurer of the Maruthi Zen Car. The petitioner contending that he sustained nine fractures and also lost one teeth in the said accident and undergone treatment as inpatient in Central India Institute of Medical Sciences, Nagpur from 17.10.1999 to 18.11.1999 and was in the hospital for 19 days and he used to go for follow up treatment to Nagpur in a private car by paying Rs.1,500/- per trip and spent Rs.1,27,174/- towards medical bills and hospital charges, sought the aforesaid amount.

4. The respondents 1 and 2 remained *ex parte*. The respondents 3 and 6 which is one and the same National Insurance Company filed counter denying the material allegations and raising various pleas and finally sought to dismiss the claim petition against the Corporation. The respondents 4 and 5 filed common counter. According to their case, the lorry driver was negligent by parking it on road in the night time without keeping the lights on and due to the negligence on the part of the lorry driver the accident had occurred and, therefore, sought to exonerate them.

5. The Tribunal, based on the said pleadings, framed the following three issues about the responsibility for the accident.

“1. Whether the petitioner sustained injuries in the accident occurred on 16.10.1999 due to the rash and negligent driving of lorry No.MH-31-W-3581 by its driver or Maruthi Car No.MH-31-AG-650 by its driver?

2. Whether the petitioner is entitled to any compensation? If so, to what amount and against whom?

3. To what relief?

6. During enquiry, the petitioner, besides examining himself as PW.1, also examined Dr. G. Srinivas as PW.2 and Dr. Markand Dhoparkar, Orthopaedic Surgeon, as PW.3 and marked Exs.A1 to A18. On behalf of the respondents, no witnesses were examined and no documents were filed.

7. On appraisal of evidence, the Tribunal on issue No.1, held it in favour of the petitioner recording the finding that, on account of rash and negligent driving of both the drivers of lorry bearing registration No.MH-31-W-3581 and Maruthi Car bearing registration No.MH-31-AG-650, the accident had occurred.

8. On issue No.2, the Tribunal disbelieved the evidence of PWs.2 and 3, since their evidence varies with the evidence of each other and, in fact, PW.2's evidence shows that he has only checked the line of treatment given to the petitioner and basing on it he issued Ex.A9 - disability certificate assessing the disability at 35%, which the Tribunal did not believe. The Tribunal, therefore, granted a sum of Rs.1,24,526/- towards medical bills, Rs.20,000/- towards pain and suffering and Rs.5,000/- towards extra nourishment. Thus, a total sum of Rs.1,49,596/- was granted as compensation with interest at 9% p.a., thereon against the respondents 1 to 6 holding that they are jointly and severally liable for payment of the compensation.

9. Aggrieved by the aforesaid order, the instant appeal is preferred by the petitioner contending in the grounds of appeal that the Tribunal without any convincing reason rejected the partial permanent disability issued by PW.2 and the amount of compensation granted by the Tribunal is very meagre and, therefore, sought to grant the balance amount.

10. Heard Sri S. Chandrasekhar, learned counsel for the appellant, and Sri R.K. Suri, learned counsel for the sixth respondent – Insurance Company for the Maruthi Zen Vehicle. The appeal was dismissed for default against the respondents 1, 2 and 5, by the order dated 02.01.2012. Despite service of notice on respondents 3 and 4, none appears for them.

11. Learned counsel for the appellant contends that, though, the Tribunal discarded Ex.A9 - disability certificate and the evidence of PW.2 and even the evidence of PW.3, still, the Tribunal did not disbelieve the nature of injuries and the number of injuries sustained by the petitioner and, in that view of the matter, granting a sum of

Rs.20,000/- towards pain and suffering for the injuries sustained by the petitioner, which are fractures numbering nine (9), is against the well established principles of law and lack of appreciation by the Tribunal and, therefore, the petitioner is entitled to compensation for each grievous injury, besides other non-pecuniary damages, which the Tribunal did not award.

12. On the other hand, learned counsel for the sixth respondent – Insurance Company supported the order passed by the Tribunal.

13. A perusal of the order would show that, the Tribunal granted a sum of Rs.20,000/- for pain and suffering, despite believing the nature of injuries sustained by the petitioner. The injuries sustained by the petitioner are described by PW.3, who has treated the petitioner, as follows.

“1. Multiple non-haemorrhagic contusion in brain i.e., injury

No.1.

2. Fracture of left femur.

3. Fracture of left clavicle first rib.

4. Fracture of left scapula.

5. Fracture of C-7 trans process.

6. Fracture of lateral wall on left maxilla.

7. Fracture of mandible on right side close to the symphysis menti extending into the alveolar ridge.

8. Lacerated wounds on the left eye brow, lower lip (left side) chin, left eye.

14. The Tribunal has recorded a finding that the disability cannot be believed as PW.2 was not the doctor who treated the petitioner and even according to the own admission by PW.2 in his cross-examination that he has only checked up the line of treatment given to PW.1 and, therefore, that finding recorded by the Tribunal cannot be faulted with, as it does not suffer from any legal infirmity warranting interference.

15. So far as the compensation granted by the Tribunal for the injuries sustained by the petitioner is concerned, certainly, it suffers from want of appreciation in proper perspective. The injuries sustained by the petitioner would reflect that he sustained as many as eight (8) fractures, more particularly, the multiple contusions in brain, though, there was no haemorrhage, still, would have lot of impact on the petitioner requiring a prolonged follow-up treatment. Therefore, keeping in view, the sufferance of the petitioner undergone and the trips he made to Nagpur for follow-up treatment, a sum of Rs.40,000/- can be awarded for the first injury and for injuries 2 to 8 a sum of Rs.20,000/- each is awarded as they are located on different areas of the person of PW.1. Thus, the petitioner is entitled to a sum of Rs.1,80,000/- towards injuries and pain and suffering put together as against Rs.20,000/- granted by the Tribunal. The amount of Rs.1,24,596 granted by the Tribunal towards medical expenses is maintained. Towards extra nourishment, the amount of Rs.5,000/- granted by the Tribunal is enhanced to Rs.10,000/-. Towards transport charges, as can be gathered from the evidence of PWs.1 and 3, certainly, the petitioner is entitled to a sum of Rs.25,000/-, since the petitioner had to travel all the way from Adilabad to Nagpur by engaging private vehicles. Towards attendant charges a sum of Rs.10,000/- is granted. Thus, the petitioner is entitled to a total sum of Rs.3,49,596/- which is rounded off to Rs.3,50,000/- as against Rs.1,49,596/- granted by the Tribunal. However, the rate of interest granted by the Tribunal is reduced from 9% p.a., to 7.5% p.a., as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**.

16. Accordingly, the appeal is allowed in part modifying the impugned award passed by the Tribunal, by enhancing the compensation and reducing the rate of interest as stated supra. There shall be no order as to costs.

17. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal shall stand closed.

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**A. SHANKAR NARAYANA, J**

Date: 02.04.2015

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