

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No. 1208 of 2006

JUDGMENT:

This is a claimant's appeal. Dissatisfied with the award of Rs.15,000/- as compensation granted by the learned Chairman, Motor Vehicles Accidents Claims Tribunal-cum-I Additional District Judge, Chittoor (for short 'the Tribunal') vide order dated 23.01.2006 in M.V.O.P. No.453 of 2000, as against the claim laid for Rs.1,50,000/- under Section 166 of the Motor Vehicles Act, 1988, the instant appeal is preferred by the petitioner/appellant seeking enhancement of compensation.

2. The appellant herein is the petitioner before the Tribunal, while the respondent Nos.1 and 2, who are the owner and insurer of the mini lorry bearing registration No.KA-03-5144 respectively, were respondents in the original petition.

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

4. The facts, in brief, are that on 11.07.1999, while the petitioner was proceeding in the mini lorry bearing registration No.KA-03-5144 belonging to respondent No.1 and insured with respondent No.2 from Bangalore to Chittoor with load and when it reached near Bheemugani Indlu on Palamaner-Chittoor road, at about 2.00 AM, the driver of the lorry has driven it in a rash and negligent manner; as a result, the mini lorry turned upside down, due to which, he sustained multiple injuries all over his body and the concerned police also registered a case against the driver of the mini lorry. The petitioner claims that initially he was taken to Government Head Quarters Hospital, Chittoor and later he was

shifted to Government Hospital, Vellore where he underwent treatment as in-patient for nine days and claims that later he took treatment in Madras for about two weeks. According to him, skin grafting was also done. He states that he was working as cleaner by profession and was earning monthly salary of Rs.1,750/-. He claims that he spent Rs.15,000/- towards medical expenses and Rs.10,000/- towards incidental expenses, and, therefore, sought a sum of Rs.1,50,000/- as compensation.

5. Respondent No.2 filed counter opposing the claim. Respondent No.1 filed a memo adopting the counter filed by respondent No.2. They required the petitioner to prove the material allegations levelled in the petition. According to them, the petitioner has not chosen to file any certificate issued by the Medical Board, and, hence, they sought for dismissal of the claim petition.

6. Based on the above pleadings, the Tribunal framed two issues about responsibility for the accident. During enquiry, the petitioner was examined as PW.1 and Dr. Veeraswamy from Government Pentland Hospital, Vellore was examined as PW.2, besides marking Exs. A1 to A5. A copy of the insurance policy was marked on consent as Ex.B1. No witnesses were examined on behalf of the respondents.

7. The Tribunal, on appraisal of evidence of PW.1 supported by the documentary evidence under Exs. A1 and A2, which are certified copies of F.I.R and Charge Sheet, tendered a finding that only due to rash and negligent driving of the driver of the mini lorry the accident has occurred and held issue No.1 in favour of the petitioner. On issue No.2, the Tribunal excluded 10% disability spoken to by PW.2 for the reason that he was not the Doctor, who

treated the petitioner and consequently issued Ex.A4. However, the Tribunal granted a sum of Rs.15,000/- towards compensation taking into consideration the other material on record including the evidence of PW.s 1 and 2 holding that the petitioner sustained only simple injuries, and granted interest at the rate of 7.5% per annum on Rs.15,000/-.

8. The aforesaid order is under challenge by the petitioner contending in the grounds of appeal that the Tribunal did not properly appreciate the evidence on record and thereby restricted the claim by awarding a compensation of Rs.15,000/-, which ought not to have done. It is also stated that the Tribunal was not right in discarding Ex.A4. It is also stated that the Tribunal failed to appreciate that due to the accident the claimant sustained injuries to his right forearm and was unable to lift his right fore arm and thus, he suffered from partial disfigurement and due to the same he lost his employment as cleaner, and, therefore, sought to grant balance amount.

9. Heard Sri T.C. Krishnan, learned counsel for the appellant/petitioner and Sri Ravi Shankar Jandhyala, learned counsel for the second respondent/United India Insurance Company Limited. None appeared for respondent No.1 despite service of notice.

10. Perused the order of the Tribunal and the evidence on record. So far as the nature of injuries sustained by the petitioner is concerned, there is no definite material on record to show that he has sustained grievous injuries. In fact, even as per Ex. A2, which is certified copy of the charge sheet on the file of the learned V Additional District Munsif Magistrate, Chittoor, registered for the offence punishable under Section 337 of the IPC,

it is clear that the petitioner sustained only simple injuries but not grievous injuries.

11. Now the question that arises for consideration is whether the petitioner is entitled to any enhancement?

12. The evidence of PW2, who was working as Orthopedic Surgeon at Government Vellore Medical College Hospital since 1992, is of some importance. Of course he was not the Doctor, who treated the petitioner, and his evidence shows that Dr. Siva Kumar, who treated the petitioner and has issued Wound Certificate, was on leave on the date when the Advocate Commissioner executed warrant of commission. His evidence shows that he deposed basing on original records of the said hospital showing that the petitioner sustained the following three injuries:

- “(i) Degloving injuries over right elbow 20 x 15 cms. exposing bones and muscles.
- (ii) 7 x 7 cms. skin abrasion over right wrist and fore-arm.
- (iii) 1 x 1½ cms. Lacerated injury over above the left eye-brow.”

His evidence shows that the petitioner was admitted in the Hospital on 11.07.1999 and was discharged on 18.07.1999. The true copy of the accident register is marked as Ex. X1. He stated that the petitioner was suffering from partial permanent disability at 10%, but the finding recorded by the Tribunal that he was not the Doctor who treated PW1 and not competent to issue Ex. A4 Disability Certificate cannot be faulted with. However, the evidence of P.W.2 reflects that the petitioner's hand-grip is weak and the supination movement of the right forearm was restricted

and the petitioner has been suffering from pain due to severe bleeding injury under right forearm and wrist. These observations are of some importance showing the sufferance undergone by the petitioner. The petitioner was treated as in-patient from 11.07.1999 to 18.07.1999. Therefore, keeping in view the same permanent disability can be accepted, since the petitioner must have suffered temporary disability keeping in view, that the petitioner has also undergone treatment as in-patient and the nature of injuries, a further sum of Rs.15,000/- can be granted to the petitioner for the suffering he has undergone and for the inconvenience he had to undergo at least for a considerable period after the accident.

13. Therefore, the petitioner is totally entitled to a sum of Rs.30,000/- towards compensation as against Rs.15,000/- awarded by the Tribunal and the same is accordingly granted. The interest granted by the Tribunal at 7.5% per annum is not disturbed. Even on enhanced amount interest at 7.5% per annum is granted from the date of petition till realization, as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**^[1].

14. In the result, the appeal is allowed in part, and the award and decree dated 23-01-2006 passed by the Tribunal in M.V.O.P. No.453 of 2000 is modified, enhancing the compensation to Rs.30,000/- (Rupees thirty thousand only) from Rs.15,000/-, with interest at the rate of 7.5% from the date of petition till realization. The petitioner is also permitted to withdraw the entire amount. There shall be no order as to costs.

15. As a sequel thereto, miscellaneous applications, if any,

pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

Date: **19.01.2015**
MVA

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Dt. 19.01.2015

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