

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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C.M.A. No.891 of 2004

JUDGMENT:

Dissatisfied with the amount of Rs.35,000/- granted as compensation by the order dated 22.11.2003 in O.P.No.1198 of 1997 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Ranga Reddy District at L.B.Nagar, Hyderabad (for short, 'the Tribunal') as against the claim of Rs.1,50,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), for the injuries sustained by the petitioner in a road accident, the instant appeal is preferred seeking enhancement of compensation.

2. The appellant herein is the petitioner, while the respondent Nos.1 and 2, who are the owner and insurer of the accident vehicle respectively, were respondent Nos.1 and 2 respectively, in the original petition.

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

4. The facts in brief are that on 28.05.1997 at about 5-30 p.m., while the petitioner, along with another, was proceeding on his scooter bearing registration No.AZA 7279 towards Uppal, when they reached near Saw Mill, Krishna Nagar, H.B.Colony, a lorry bearing registration No.AHT 1886 came from Uppal side in a rash and negligent manner dashed his scooter, due to which, both of them sustained injuries and were shifted to Gandhi Hospital, Secunderabad, from there, they were shifted to Sumithra Nursing Home, Begumpet. He stated that he spent about Rs.50,000/- towards treatment. Therefore, he sought Rs.1,50,000/- as compensation for the injuries sustained by him from respondent Nos.1 and 2, who are the insured and insurer respectively.

5. Respondent No.1-owner of the accident vehicle remained *ex parte*. Respondent No.2-insurer opposed the claim raising various pleas.

6. Basing on the said pleadings, the Tribunal framed four issues about the responsibility for the accident. During enquiry, the petitioner examined himself as P.W.1 besides examining Dr. K.Ramakantha Rao as P.W.2 and marked Exs.A.1 to A.8 to substantiate his claim; whereas, on behalf of respondent No.2, no witnesses were examined and no documents were marked.

7. The Tribunal, on appraisal of evidence, both, oral and documentary, let in by the petitioner, held issue No.1 in favour of the petitioner. On issue Nos.2 and 3, while observing that the relevant witnesses were not examined to prove that the petitioner sustained fractures and the medical expenses said to have incurred by him under Exs.A.5 and A.6, however, basing on the evidence of P.W.2 and Exs.A.7 and A.8, found that the petitioner sustained fracture, and thereby, granted a total sum of Rs.35,000/-, while rejecting Ex.A.4 disability certificate by assigning reasons therefor.

8. It is the aforesaid order which is under challenge in the instant appeal by the petitioner seeking enhancement of compensation contending in the grounds that the Tribunal did not properly appreciate the evidence on record. It is also stated that despite the fact that the petitioner sustained fracture of shaft of right Tibia, fracture to right femoral condyle, fracture of neck of fibula right, compound fracture and metatarsal bones of right foot, still, the Tribunal awarded meager sum of Rs.35,000/-. It is also stated that the Tribunal was not right in discarding Exs.A.5 to A.8, medical bills, which would prove that the petitioner spent Rs.46,500/- towards medical expenses, despite observing that the petitioner underwent surgical intervention and was bedridden, and, therefore, sought to grant the balance amount.

9. Heard Sri M.Krishna Reddy, learned counsel for the appellant-petitioner, and Sri Ch.Srinivas, learned Standing Counsel for the 2nd respondent. In fact, in the instant appeal, on 06.03.2015, this Court directed the appellant-petitioner to take personal service of fresh notice and file proof of service, failing which the appeal shall stand dismissed. Subsequently, perhaps by inadvertence, fresh notice was ordered on 05.06.2015 to the 1st respondent. However, the dismissal of appeal against 1st respondent, who is the owner of the accident vehicle, is of no consequence as he suffered decree passed by the Tribunal.

10. It is not in dispute that the petitioner sustained three fractures as could be gathered from the evidence of P.W.2, though, he was examined for the purpose of establishing that the petitioner has sustained partial permanent disability and issued Ex.A.4 therefor. But the Tribunal rightly discarded Ex.A.4, disability certificate, basing on the admission made by him that it was not issued by any Medical Board. However, keeping in view that the petitioner sustained three fractures and even in view of the finding of the Tribunal that the petitioner underwent surgical intervention, the petitioner is entitled to a sum of Rs.25,000/- towards each injury. Thus, towards injuries including pain and suffering due to three fractures, the petitioner is entitled to Rs.75,000/-. Towards extra nourishment, the petitioner is entitled to a sum of Rs.5,000/-. Towards attendant charges, he is entitled to a sum of Rs.5,000/-. Since he sustained three fractures, he must have been unable to attend to his occupation and it would have taken considerable time, accounting to loss of earnings at Rs.2,000/- per month atleast for six months, a sum of Rs.12,000/- is granted. Towards medical expenses, the petitioner claims that he spent Rs.46,500/- and filed Exs.A.5 and A.6, more particularly, Ex.A.5, which is bunch of medical bills. It is no doubt true, none connected thereto was examined to prove Exs.A.5 and A.6, but keeping in view that there

was surgical intervention, the petitioner is entitled to a sum of Rs.30,000/- towards medical expenses.

11. Thus, the petitioner is entitled to a total sum of Rs.1,27,000/- (Rupees one lakh and twenty seven thousand) as against Rs.35,000/- granted by the Tribunal, towards compensation and the same is accordingly granted. The Tribunal granted interest at 9% per annum, but the same is reduced to 7.5% per annum on the entire amount 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**^[1].

12. Accordingly, the instant appeal is allowed in part modifying the order passed by the Tribunal, by enhancing the compensation and reducing the rate of interest, as indicated above, and confirming the same in all other respects. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

11th June, 2015

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^[1] 2013 ACJ 1403