

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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M.A.C.M.A.No.1099 of 2006

JUDGMENT:

Dissatisfied with the amount of Rs.1,15,000/- granted by the Tribunal as compensation for the injuries sustained by the petitioner as against the claim of Rs.6,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') by the order dated 25.01.2006 in O.P.No.1445 of 2003 on the file of Chairman, Motor Accidents Claims Tribunal-cum-IV Additional Metropolitan Sessions Judge, Hyderabad-cum-XVIII Additional Chief Judge, Hyderabad, the instant appeal is preferred.

2. The appellant herein is the petitioner in the original petition before the Tribunal, while respondent Nos.1 and 2, who are the owner and insurer of the tipper bearing No.AP-11-U-8735 respectively, were respondents Nos1 and 2 respectively.

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 18.03.2003 at about 06.00 PM, the petitioner was proceeding on his Bajaj Chetak Motor Cycle bearing No.AP-12-B-881 along with one Dhanjaya from Agapally towards Ibrahimpatnam side and when it reached Agapally Crusher mission compound, the tipper bearing No.AP-11-U-8735, being driven by its driver in a rash and negligent manner and at high speed hit the scooter, due to which the petitioner and the pillion rider sustained injuries. They were shifted to Osmania General Hospital and from there to Yashoda Hospital. The petitioner claims that he was earning Rs.15,000/- per month as contractor and was aged about 30 years. Due to the injuries, he was unable to pursue his occupation. According to him, he underwent operation on 18.03.2003 and spent about Rs.1,50,000/- towards treatment. He has undergone treatment at Nightingale Hospital, Santhoshnagar from 25.03.2003 to 31.03.2003 and spent Rs.2,00,000/- and he requires further operation for removal of rods costing another sum of Rs.25,000/-. Therefore, he sought Rs.6,00,000/- as compensation against respondent Nos.1 and 2, who are the owner and insurer of the tipper respectively.

5. The 1st respondent-owner of the vehicle remained *ex parte* before the Tribunal and the 2nd respondent-Insurance Company opposed the claim raising various pleas finally contending that the claim is highly excessive and, therefore, sought to dismiss the claim.

6. Basing on the above pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry, the petitioner himself was examined as P.W.1 besides examining Dr. A. Arvind Kumar as PW.2 and Dr. V.Naresh as PW.3 and marked Exs.A.1 to A.11. On behalf of the 2nd respondent-Insurance Company, no witnesses were examined, but a copy of policy was marked as Ex.B.1.

7. The Tribunal took up the appreciation of evidence by way of common discussion on issue Nos.1 to 3, held in favour of the petitioner, awarding a total sum of Rs.1,15,000/- with interest @ 7.5% per annum and the details of amount awarded towards each injury and amount towards special and general damages, have been narrated in Para '13' of the order as item Nos.1 to 9, besides granting a sum of Rs.30,000/- towards medical expenses.

8. It is the said order which is under challenge, in the instant appeal preferred by the petitioner on the ground that meager compensation was granted contending that the Tribunal failed to take into consideration 15% disability sustained by him as deposed by PW.2 without assigning any reason. Even the Tribunal did not consider Ex.A.6 in its entirety and did not grant amounts mentioned therein. Further, the Tribunal did not grant amount towards future surgery despite there being evidence of the Doctor, specifically showing that the petitioner has to undergo further surgical intervention for removal of the implants and, therefore, sought to grant balance amount.

9. Heard Sri C. Vikram Chandra, learned counsel for the appellant and Sri Somanchi Venkateswarlu, learned counsel for the 2nd respondent-insurance company. Respondent No.1 is un-served, it makes no difference, since, he remained *ex parte* before the Tribunal.

10. Perused the order under challenge and oral and documentary evidence let in by the petitioner. There is elaborate discussion on the evidence of PWs.2 and 3 in Paras 9, 10 and 12. The finding recorded by the Tribunal that there is no evidence to prove partial or permanent disability due to the injuries sustained by the petitioner as

shown in Exs.A.4 and A.5, since based on appreciation of evidence, it does not warrant interference as there is no disability certificate at all issued by the Doctor concerned who treated the petitioner. Therefore, the Tribunal was right in excluding permanent disability of 15%, which is mentioned in the grounds of appeal. Since, the facts are not in dispute, except to the extent, that there is no proof that the petitioner has undergone treatment in Nightingale Hospital, which also does not, warrants interference, the amount of Rs.10,000/- towards shock, pain and loss of amenities is enhanced to Rs.15,000/- in view of nature of injuries sustained by the petitioner as reflected from Exs.A.4 and A.5. Concerning the 2nd injury, which is polytrauma with head injury with fracture occipital bone with contusion brain plus small sub dural bleed in left temporal, certainly, a sum of Rs.25,000/- would be on lower side. Therefore, a sum of Rs.50,000/- is granted as against Rs.25,000/-, since consequence of this injury invariably would be on other organs of the person of PW.1 with which he must face inconvenience for quite sometime till he recovered. Even concerning 3rd item, an amount of Rs.10,000/- granted for fracture of left femur is enhanced to Rs.15,000/-. Rest of the amounts granted towards injuries from item Nos.4 to 9 do not warrant interference. The amount of Rs.30,000/- granted towards medical and incidental expenses referred to in Para 14 is confirmed and the petitioner is not entitled to further amount since the advance amounts were included in Ex.A.5 final bill. However, towards surgical intervention for removal of implants as per the evidence of Doctor-PW.2 and Ex.A.10 estimation issued by Yashoda Hospital, an amount of Rs.15,000/- is granted. Thus, the petitioner is entitled to Rs.50,000/- by way of enhancement, making the total compensation as Rs.1,65,000/- as against Rs.1,15,000/- granted by the Tribunal, with interest at 7.5% per annum throughout the award as per the decision of the Hon'ble Apex Court in ***Rajesh and others v. Rajbir Singh and others***.

11. In the result, the appeal is allowed in part and the award and decree dated 25.01.2006 passed by the Tribunal in O.P.No.1445 of 2003 is modified, enhancing the compensation to Rs.1,65,000/- from Rs.1,15,000/-, with interest at the rate of 7.5% per annum throughout from the date of petition till realization. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

Date: 11.02.2015.

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