

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.55 OF 2006

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JUDGMENT:

Having got dissatisfied with the award of Rs.26,517/- as compensation for the injuries sustained by the petitioner by the order dated 31.12.2004 in O.P. No.936 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-XI Additional Chief Judge (F.T.C.), City Civil Court, Hyderabad, as against the claim of Rs.1,00,000/- laid under Section 166 of the Motor Vehicles Act, the instant appeal is preferred seeking enhancement.

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

3. The facts in brief are that on 11.03.2003, the petitioner was returning from Kutbullapur on his Bajaj Chetak scooter along with A pillion rider, at about 5.00 p.m. and when they reached Sahadevareddy crushing machine at Pasumamla Village, an APSRTC bus bearing No.AP 10Z 6628, driven at high speed in a rash and negligent manner came in opposite direction and dashed the scooter, due to which the pillion rider, who is the petitioner sustained head injuries. The petitioner states that he suffered Grade-II compound fracture of medial malleolous of left ankle, injury over the head and other parts of the person. He was shifted to Osmania General Hospital where he underwent treatment and ultimately claims that he suffered partial permanent disability. The concerned police registered a case against the R.T.C. driver under Section 338 I.P.C. and observed usual formalities. Hence, he sought Rs.1,00,000/- as compensation.

4. The respondents/A.P.State Road Transport Corporation filed counter resisting the claim, contending that the vehicle, on which the petitioner was a pillion rider was triple riding and that too the driver of the scooter was driving the scooter in a rash and negligent manner at high speed and while trying to

overtake a tipper passing ahead of them in the same direction without noticing the bus and without taking proper care, dashed the R.T.C. bus having lost control over the vehicle. Therefore, A.P.State Road Transport Corporation is not liable to pay compensation to the petitioner. It also contends that the owner and insurer of the scooter were not made as parties. Therefore, the claim is bad for non-joinder of necessary parties.

5. The Tribunal, based on the above pleadings, framed three issues to fix responsibility for the accident.

6. In the enquiry before the Tribunal, the petitioner examined himself as P.W.1 besides examining Dr.S.Venkat Raman, who was issued Ex.A4, handicap certificate as P.W.2 and marked Exs.A1 to A37. On behalf of the respondents, R.W.1, Bikshapathi, driver of the RTC bus was examined as R.W.1 and no documents were marked.

7. The Tribunal, on overall assessment of the evidence on record, while discarding the evidence of R.W.1, held that due to rash and negligent driving of R.W.1, the accident had occurred. On issue No.2, as per the determination of compensation, the Tribunal granted the following amounts.

	Rs.
Loss of earnings claimed at Rs.10,0000	8,000.00
Transport to hospital	1,000.00
Extra nourishment	5,000.00
Damages to clothing and articles	1,000.00
Pain and suffering	15,000.00
Disability	Nil
Loss of future earnings as against claim of Rs.18,000/-	Nil
Medical charges (evidence by bills under Exs. P8 to P25 which upto Rs.5,376/-	5,356/-
Total	35,356/-

8. The Tribunal also discussed in para-20 of the judgment taking note of triple riding and observed that the scooter was meant for only two persons and the petitioner himself afforded to be seated on the scooter and, thus,

contributed to the accident, and thereby apportioned the negligence at 1/4th and attributed 3/4th remaining negligence to the APSRTC driver, and proportionately deducted the amount from the total amount of Rs.35,356/- and granted 3/4th amount of Rs.26,517/- towards the negligence of the APSRTC driver and granted the same with interest at 9% p.a.

9. It is the aforesaid order, which is under challenge requesting to grant the balance amount contending in the grounds of appeal that the Tribunal has not properly scrutinized the medical bills and failed to grant compensation. It is also stated that the Tribunal has not appreciated the evidence in proper perspective despite the fact that the petitioner sustained Grade-II compound fracture and medial malleolous of left ankle and also injuries all over his person and sustained partial permanent disability, as per the evidence of P.W.2 and that the Tribunal overlooked the same without assigning proper reasons and therefore, sought to grant balance amount.

10. Heard Smt.Jayanti.S.C.Sekhar, learned counsel for the appellant, and Sri N.Vasudeva Reddy, learned counsel for the respondents 1 and 2.

11. Perused the order and other material on record. As seen from the grounds of appeal the appellant has not challenged the deduction of 1/4th from the compensation amount determined by the Tribunal on the ground that the petitioner contributed to the accident and deducted proportionately the compensation determined by it. Therefore, that finding does not require any probe at all.

12. The finding recorded by the Tribunal so far as the partial permanent disability is concerned, it is based on appreciation of evidence on record and P.W.2, not being a medical board member and there was no proper elaboration as to how the restriction was assessed in accounting for partial permanent disability. The said finding, therefore, does not warrant interference as it does not suffer any legal infirmity. The Tribunal granted Rs.8,000/- towards loss of earnings as against Rs.10,000/- claimed by the petitioner. When kept in view, the injury sustained by the petitioner, he is entitled to Rs.10,000/- as claimed. An amount of Rs.1,000/- towards transport to hospital, Rs.5,000/- towards extra nourishment, Rs.1,000/- towards damages to clothing and

articles granted by the Tribunal are concerned, they are confirmed. However, the amount of Rs.15,000/- granted towards pain and suffering for the injuries sustained by the petitioner certainly, it is on lower side. As seen from the nature of injuries, the petitioner sustained Grade-II compound fracture of medial malleolous of left ankle, injury over the head and other parts of his person. Hence, it would be just and reasonable to enhance the amount of Rs.15,000/- to Rs.35,000/-. Towards medical charges, the Tribunal granted Rs.5,376/- based on Exs. P8 to P25. Therefore, the ground agitated in the grounds of appeal that no amount was awarded towards medical expenses and the bills were not properly scrutinized has no merit, as Exs.A26 to A36 are only prescriptions but not supported by bills. Thus, the total compensation works out to Rs.57,536/-. Out of the same, if 1/4th of the amount i.e., Rs.14,339/- towards contributory negligence of the petitioner is deducted, it works out to Rs.43,017/-. Thus, the total compensation determined by the Tribunal at Rs.26,517/- is enhanced to Rs.43,017/-, which is rounded off to Rs.43,100/-.

13. The Tribunal has granted interest at 9% p.a., and the same is reduced to 7.5% p.a., as per the decision of the Apex Court in **Rajesh v. Rajbir Singh**.

14. Accordingly, the appeal is allowed in part. No order as to costs.

15. Consequently, miscellaneous applications, if any, filed in the instant appeal, shall stand closed.

A. SHANKAR NARAYANA, J

March 23, 2015

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