

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

-

M.A.C.M.A. No. 136 of 2006

-

JUDGMENT:

Not satisfied with the amount of Rs.42,867/- as compensation for the injuries sustained by the petitioner, by order dated 31.12.2004 in O.P.No.933 of 2003 on the file of Motor Accidents Claims Tribunal-cum-XI Additional Chief Judge, City Civil Court, at Hyderabad (for short, 'the Tribunal'), as against the claim of Rs.1,00,000/-, the instant appeal is preferred seeking enhancement under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act').

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

3. The facts in brief are that on 11.03.2003, the petitioner, along with another pillion rider, was proceeding on Bajaj Chetak Scooter at Kutbullapur and when they reached Sahadevareddy crushing machine at Pasumamla village, an RTC bus bearing No. AP 10Z 6628 belonging to the respondents, driven at high speed in a rash and negligent manner, hit the scooter resulting in the petitioner sustaining injuries and he was shifted to Osmania General Hospital where he underwent treatment for the fracture of left ankle and sustained partial permanent disability. The Hayathnagar police registered a case against the driver of the RTC bus for the offence punishable under Section 338 IPC.

4. The respondents opposed the claim contending that there was negligence on the part of the scooterist as the petitioner was trying to overtake the tipper which was passing in the same direction and the RTC bus was coming in opposite direction and despite the bus driver taking the bus to the extreme left of the road, the petitioner hit the bus and thereby sustained injuries, and, therefore, sought to dismiss the claim petition.

5. Basing on the above pleadings, the Tribunal framed the following three issues:

“(i) Whether the accident took place on 11-3-2003 at about 5.00 pm near Pasumamla village, due to rash and negligent driving of the RTC bus bearing No.AP 10Z 6628 by its driver?”

“(ii) Whether the petitioner is entitled to claim compensation for the injuries sustained by him? If so, to what amount and from whom?”

“(iii) To what relief?”

6. During enquiry, the petitioner examined himself as PW-1 besides Dr. Venkataraman, Orthopedic Surgeon as PW2 and marked Exs.P-1 to P-44. On behalf of the respondents, the driver of the bus was examined as RW-1 and no documents were marked.

7. After assessing the evidence on record, on issue No.(i), the Tribunal, basing on admissions of PW-1 in his cross examination, arrived at the conclusion that PW-1 contributed to the accident and his negligence was thereby fixed at 25%, while the remaining 75% was cast on the driver of the RTC bus. On issue No.(ii), the Tribunal granted Rs.8,000/- towards loss of earnings for two months @ Rs.4,000/- per month; Rs.1,000/- towards transport to hospital; Rs.5,000/- for extra nourishment; Rs.1,000/- towards damages to clothing; Rs.15,000/- towards pain and suffering; Rs.25,000/- towards disability and Rs.2,156/- towards medical charges; and, thus, arrived at a total compensation of Rs.57,156/- and after deducting 1/4th amount from Rs.57,156/-, granted Rs.42,867/- as compensation with interest at 9% per annum. It is that order which is under challenge in the instant appeal, contending in the grounds of appeal that the Tribunal ought to have seen that the petitioner was earning Rs.10,000/- on his profession as tailor and despite filing medical bills marked as Exs.P-2 to P-44, the Tribunal did not grant the amount claimed and, therefore, sought to grant the balance amount.

8. Heard Smt Jayanti S.C. Sekhar, learned counsel for the appellant and Sri N Vasudeva Reddy, learned Standing Counsel for the respondent RTC and perused the record and the order under challenge and also the evidence, more particularly, the evidence of the doctor examined as PW2.

9. So far as the finding with regard to casting 25% negligence on PW1 is concerned, since it is based on appreciation of evidence with reasons, the same is not disturbed. Concerning determination of compensation, the Tribunal granted Rs.8,000/- towards two months salary. Keeping in view the nature of injuries sustained by the petitioner, as he must have suffered inconvenience for four months, the amount is doubled, making it to Rs.16,000/- from Rs.8,000/-. The amount of Rs.5,000/- granted towards extra nourishment is not interfered with. Even the amount of Rs.15,000/- granted towards pain and suffering is not interfered with. The Tribunal, though, did not apply any formula in determining the compensation towards partial permanent disability basing on the evidence of PW2, still awarded Rs.25,000/-. Unless a definite finding is recorded by the Tribunal as to the percentage of partial permanent disability, and the definite income, it is difficult even for this Court to apply multiplier method. This apart, the disability certificate was not issued by the Medical Board concerned and it was issued by PW2 himself. Therefore, much weight cannot be given to the evidence of PW2 and the percentage of disability assessed by him. However, keeping in view, that it was ankle injury and much inconvenience must have been suffered, it is enhanced to Rs.40,000/- from Rs.25,000/-. Therefore, the total compensation works out to Rs.80,156/-, and deducting $\frac{1}{4}$ th from the total compensation, the compensation to which the petitioner is entitled, works out to Rs.60,117/-.

10. Thus, the compensation is enhanced to Rs.60,117/-. So far as the interest is concerned, the Tribunal granted 9% interest per annum, which requires modification as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**. Therefore, the interest is reduced to 7.5% per annum from 9% per annum on the amount granted by the Tribunal. Thus, interest at 7.5% per annum is granted on Rs.60,117/- from the date of petition till realization.

11. Accordingly, the appeal is allowed in part. No order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

JUSTICE A. SHANKAR NARAYANA

27th February, 2015

ksm

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-

M.A.C.M.A. No. 136 of 2006

-
-

27th February, 2015