

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CMA Nos. 4811 and 4835 of 2004

Common Judgment:

Both these claims arise out of one and the same accident. These claims in OP Nos.82 and 81 of 2000 respectively, were disposed of by the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Adilabad, along with OP Nos.78, 79, 80 and 83 of 2000, by a common order, dated 10th September 2004.

2. It is submitted by the learned counsel for the appellants/claimants and learned Standing Counsel for the second respondent-Insurance Company that altogether three appeals were preferred by the claimants as against six (6) claim petitions and one of the appeals in CMA No.4779 of 2004 was disposed of by this Court on 17th October 2014, in which the decree in OP No.80 of 2000 was challenged by the claimant and the copy of the said judgment is also placed on record. Admittedly, no appeals were preferred by the second respondent - Insurance Company or by the first respondent – owner of the steering Auto.

3. In OP No.82 of 2000 the Tribunal has awarded a sum of Rs.31,000/- towards compensation as against the claim of Rs.1,00,000/- claimed under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

4. In OP No.81 of 2000 the Tribunal has awarded a sum of Rs.10,000/- towards compensation as against the claim of Rs.50,000/- laid under Section 166 of the Act.

5. On the ground that meagre compensation was awarded by the Tribunal, both the claim petitioners have approached this Court by preferring the instant appeals respectively.

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

7. The fact-situation occurring in the instant case is that, on 09.02.1999, at about 8.30 PM, while the petitioners along with others were proceeding in a steering Auto bearing registration No.AP-1-U-1819 from Laxettipet to Tapalapur and, when it reached near the accident spot Nelki Venkatapur, since the driver of the Auto drove it in a rash and negligent manner at high speed and unable to control the speed applied sudden brakes, it turned upside down, resulting injuries to all the inmates of the steering Auto.

8. According to the petitioner in OP No.82 of 2000, he sustained fractures to his both legs and hands. Soon after the accident he was admitted in MGM Hospital, Warangal, and he was treated as inpatient from 10.02.1999 to 01.03.1999 and even there was surgical intervention and follow up treatment also. He sought a total sum of Rs.1,00,000/- as compensation against the respondents 1 and 2, who are the owner and insurer of the steering Auto. He was granted a sum of Rs.31,000/- towards compensation as against the claim of Rs.1,00,000/-.

9. In OP No.81 of 2000 the petitioner sought a total sum of Rs.50,000/- towards compensation for the fracture of right shoulder he received and he also sustained other injuries to his left leg and left hand and he was treated in Government Hospital, Luxettipet. He was granted a sum of Rs.10,000/- towards compensation as against the claim of Rs.50,000/-.

10. The first respondent – owner of the Auto remained *ex parte*. The second respondent – Insurance Company opposed the claim by raising various pleas.

11. The Tribunal has framed the following three common issues.

“1. Whether the accident occurred on 09.02.1999 due to rash and negligent driving of the vehicle Auto bearing No.AP-1-U-1819 by its driver?

2. Whether the petitioners are entitled to any compensation? If so, to what amount and against which of the respondents?
3. To what relief?"

12. During enquiry before the Tribunal, the respective claimants were examined as PWs.1 to 6 and marked Exs.A1 to A21 to substantiate their respective claims. On behalf of the second respondent – Insurance Company no witnesses were examined, however, the attested copy of charge sheet in Crime No.15 of 1999 of Dandepalli Police Station was marked as Ex.B1 and the attested copy of insurance policy cover note in respect of steering Auto was marked as Ex.B2.

13. The appellants in their grounds of appeals agitated that the Tribunal has not properly appreciated the evidence of PWs.5 and 4 who are the appellants herein respectively and the documentary evidence. Therefore, they claim that they are entitled to the balance amount, as the amount granted by the Tribunal towards compensation is very meagre and not just and adequate.

14. Heard Sri S. Surender Reddy, learned counsel for the appellants, Ms B. Sai Priya, learned counsel for the first respondent and Sri E. Venugopal Reddy, learned Standing Counsel for the second respondent – Insurance Company, in these two appeals.

15. It is submitted by the learned counsel for the appellants that the amount awarded by the Tribunal is very meagre and, in fact, no amounts were awarded so far as pain and suffering, extra nourishment and attendant charges are concerned in CMA No.4811 of 2004. Concerning CMA No.4835 of 2004, it is his submission that the Tribunal has deprived the appellant of all the amounts though definite claim was made for Rs.5,000/- towards extra nourishment, Rs.5,000/- towards loss of earnings and Rs.20,000/- for continuing or permanent disability. Hence, sought to enhance the compensation in both the appeals.

16. Learned counsel for the respondents 1 and 2 would submit that the amounts

awarded by the Tribunal are just and reasonable and the appellants are not entitled to any enhancement in view of the fact that they have not chosen to examine the Medical Officer who treated them.

17. The short point that arises for consideration is whether the appellants are entitled to enhancement as prayed for?

18. Concerning the injuries sustained by the appellant in CMA No.4811 of 2004 (OP No.82 of 2000), it is borne out from the record, as seen from Ex.A17, that he was admitted in MGM Hospital, Warangal, on 10.02.1999 and was discharged on 01.03.1999 and, even it discloses that there was surgical intervention to his right femur on 19.02.1999 and DHS fixture (Hip screw 85 mm plate) was also fixed and he was advised follow up treatment and required to visit the Hospital two months thereafter, for review. Even x-ray film was marked as Ex.A19. The Tribunal granted Rs.15,000/- for the grievous injury keeping in view, the recitals in Exs.A15, A17 and A19. The tribunal has also granted a sum of Rs.16,000/- towards medical expenses and Ambulance charges making a total of Rs.31,000/- as compensation. The Tribunal made an observation that the appellant has not made any claim so far as loss of earnings are concerned and, thus, it has not determined the amount towards loss of earnings.

19. As seen from the amount granted by the Tribunal, it is no doubt true, it has granted Rs.15,000/- towards grievous injury, but it appears to be on lower side and, therefore, the same is enhanced to Rs.20,000/-. The other sums granted by the Tribunal towards Ambulance charges and medical expenses totalling to Rs.16,000/- is undisturbed as they are based on documentary evidence under Ex.A18 and other receipts. However, the Tribunal has not granted any amount towards pain and suffering, extra nourishment and attendant charges. Therefore, the appellant is entitled to a sum of Rs.10,000/- towards pain and suffering, Rs.5,000/- towards extra nourishment and, since he had undergone treatment for 20 days, a sum of Rs.3,000/- is granted towards attendant charges. Though, the appellant has not claimed any amount towards temporary loss of earnings, but keeping in view, the nature of injuries the appellant must not have attended to his occupation at least for

a period of five months, a sum of Rs.10,000/- is granted at the rate of Rs.2,000/- per month for a period of five (5) months. Thus, the appellant is totally entitled to Rs.64,000/-. Accordingly, the compensation amount is enhanced from Rs.31,000/- to Rs.64,000/-. So far as interest is concerned, the Tribunal has granted interest at 9% p.a., but on the enhanced amount the appellant is entitled to interest at 7.5% p.a., 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**.

20. Concerning the request of the appellant in CMA No.4835 of 2004 (OP No.81 of 2000), he sustained one grievous injury of fracture of right clavicle. Ex.A14 is the injury certificate issued by the Civil Assistant Surgeon, Government Hospital, Laxettipet. The appellant got himself treated in the private hospital, but no evidence is forthcoming as rightly observed by the Tribunal. The Tribunal has granted Rs.10,000/- for the grievous injury keeping in view, the recitals in Ex.A14 and the same is undisturbed. However, the Tribunal has not granted any amount towards pain and suffering and extra nourishment. Therefore, keeping in view, the nature of injury sustained by the appellant, a sum of Rs.5,000/- towards pain and suffering and Rs.5,000/- towards extra nourishment are awarded. Though, the appellant has not claimed any amount towards temporary loss of earnings, but keeping in view, the nature of injury the appellant must not have attended to his occupation at least for a period of three months. Hence, a sum of Rs.6,000/- is granted at the rate of Rs.2,000/- per month for a period of three (3) months. Thus, the appellant is totally entitled to Rs.26,000/-. Accordingly, the compensation amount is enhanced from Rs.10,000/- to Rs.26,000/-. So far as interest is concerned, the Tribunal has granted interest at 9% p.a., but on the enhanced amount the appellant is entitled to interest at 7.5% p.a., from the date of petition till realization, as per the decision of the Hon'ble Apex Court in **Rajesh's case** (1 supra).

21. Accordingly, both the instant CMAs are partly allowed. There shall be no order as to costs.

22. As a sequel thereto, Miscellaneous Applications, if any, pending in these appeals shall stand closed.

A. SHANKAR NARAYANA, J

Date: 24.11.2015

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