

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

C.M.A. No.4191 OF 2004

JUDGMENT:

Dissatisfied with the award of Rs.73,000/- towards compensation for the injuries sustained by the appellant - petitioner, as against the claim of Rs.3,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') and Rule 455 of the A.P. Motor Vehicles Rules, 1989 read with Section 140 of the Act, seeking enhancement of the same, he preferred this Civil Miscellaneous Appeal against the order and decree, dated 08.08.2003, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - II Additional Chief Judge, City Civil Court, Hyderabad, in O.P. No.1603 of 2000 seeking enhancement.

2. The appellant herein is the petitioner in the O.P. before the Tribunal, while respondent Nos.1 and 2, who are owner and insurer, respectively, of the Autorickshaw bearing No.AP-13-V-1630, which involved in the accident, are respondent Nos.1 and 2, respectively.

3 . For the sake of convenience, the parties herein are hereinafter referred to as arrayed in the O.P. before the Tribunal.

4 (a) The fact-situation occurring in the instant case is that on 06.12.1999 at about 6-30 p.m., while the petitioner was travelling in the auto-rickshaw bearing No.AP-13-V-1630 from Isnapur towards Patancheruvu, near Relax Daba, since the driver of the auto-rickshaw drove it in a rash and negligent manner at high speed, hit a bullock-cart, which was proceeding ahead of the auto-rickshaw, and

on account of the same, petitioner and other passengers sustained injuries.

(b) According to the petitioner, he sustained compound fracture of left femur, hypovolemic shock and other injuries all over his person. He was immediately shifted to Apollo Hospital, Jubilee Hills, Hyderabad. The Station House Officer, Patancheruvu Police Station registered a case in Crime No.241 of 1999 initially under Section 337 of the Indian Penal Code (IPC) against the driver of the auto-rickshaw.

(c) The petitioner, claiming that he was 30 years old earning Rs.4,500/- per month by working as a Welder in a private organisation and contributing the entire earnings for the welfare of his family, sought a total sum of Rs.3,00,000/- towards compensation.

5 . Respondent Nos.1 and 2 filed their respective counters opposing the claim.

6 . Respondent No.1, owner of the auto-rickshaw, has stated that he has sold away the auto-rickshaw on 11-08-1999 itself and handed-over the same to the purchaser having received the entire sale consideration and thus, he sought to exonerate him from liability.

7 . Respondent No.2, insurer of the auto-rickshaw, opposed the claim by raising various pleas.

8 . Based on the rival pleadings, the Tribunal framed three (3) issues in the direction of fixing responsibility for the accident. During enquiry, petitioner examined himself as PW.1 and marked

Exs.A-1 to A-7. On behalf of the respondents, no witness was examined, but a copy of the insurance policy was marked as Ex.B-1 on consent.

9. The Tribunal, on appraisal of evidence let in by the petitioner, held issue No.1 in his favour. On issue No.2, the Tribunal has granted Rs.20,000/- towards compound fracture, Rs.10,000/- towards second injury, which is grievous in nature, Rs.3,000/- towards pain and suffering, extra-nourishment, transportation and attendant allowance and Rs.40,000/- towards medical expenses under Ex.A-6, though, the amount mentioned therein was Rs.82,881/-. Thus, a total sum of Rs.73,000/- was awarded by the Tribunal to the petitioner towards compensation with interest at 9% per annum.

10. Aggrieved of which, the petitioner preferred the instant appeal seeking enhancement of compensation contending that though, the petitioner spent huge amount towards medical expenses, the Tribunal without proper appreciation of evidence on record restricted the amount. It is also stated that despite sustaining compound fracture and another grievous injury, the amounts awarded towards injuries, pain and suffering and extra-nourishment are very meagre. It is also stated that though, the petitioner sustained permanent disability, still, the Tribunal has not taken the same into consideration, and, therefore, sought to enhance the compensation.

11. No representation for the petitioner. No representation even for respondent No.1. Likewise, there is no representation for respondent No.2 also, though, both of them entered appearance by getting filed vakalaths on their behalf to represent the matter.

12. The only question that falls for consideration is whether the amount awarded by the Tribunal is meagre, and, if so, the petitioner

is entitled to enhanced compensation?

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POINT:

13. As seen from the material on record, admittedly, petitioner sustained compound fracture of left femur and hypovolemic shock. From the very nature of injury sustained by the petitioner, unhesitatingly it has to be construed that he has suffered great inconvenience as his mobility itself was affected for a considerable period. Therefore, an amount of Rs.20,000/- granted by the Tribunal towards compound fracture appears to be meagre and, as such, the same is enhanced to Rs.40,000/-; for the second injury, which is grievous in nature and for which the Tribunal has awarded Rs.10,000/- only, is enhanced to Rs.15,000/-. The amount of Rs.3,000/- awarded by the Tribunal towards pain and suffering is very meagre keeping in view, the nature of injuries sustained by him and the sufferance he had undergone, it would be reasonable to award a sum of Rs.20,000/- towards pain and suffering and the same is accordingly awarded.

14. Though, Ex.A-6 shows that the petitioner has spent Rs.82,881/- towards medical expenses, by restricting the same, the Tribunal has granted Rs.40,000/-, but it has not elaborated the reasoning except mentioning that Ex.A-6 does not contain details of each item in order to accept the total amount mentioned therein. Admittedly, he was treated in Apollo Hospital, Jubilee Hills, Hyderabad. Unless the Tribunal assigns reasons for rejecting the balance amount of Rs.42,881/-, the same cannot be sustained. Hence, the total amount of Rs.82,881/- covered by Ex.A-6 is awarded towards medical expenses. No amount is awarded towards extra-nourishment, transport charges and attendant charges distinctly, and, in fact, the Tribunal has not even mentioned as to how long the petitioner has undergone treatment in Apollo Hospital as in-patient.

Therefore, towards extra-nourishment, keeping in view, the nature of injuries sustained by the petitioner, a sum of Rs.15,000/- is awarded. Towards attendant charges, at Rs.1,500/- per month for four (4) months, an amount of Rs.4,500/- is awarded and Rs.3,000/- is awarded towards transport charges. At Rs.3,000/- per month, for a period of five (5) months, a sum of Rs.15,000/- is awarded towards loss of temporary earnings.

15. No disability certificate is forthcoming, as such, the ground that the petitioner sustained permanent disability cannot be considered.

16. Thus, the petitioner is entitled to a total compensation of Rs.1,95,381/- (Rupees one lakh ninety five thousand three hundred and eighty one only) as against Rs.73,000/- awarded by the Tribunal, and the same is accordingly awarded, with interest at 7.5% per annum as against 9%, on the entire compensation, 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**. The point is accordingly answered.

17. Accordingly, the Civil Miscellaneous Appeal is allowed in part modifying the impugned award passed by the Tribunal, by enhancing the compensation and reducing the rate of interest, as stated supra. There shall be no order as to costs.

18. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal stand disposed of.

A. SHANKAR NARAYANA, J

November 23, 2015.