

HONOURABLE SRI JUSTICE A. SHANKAR

NARAYANA

M.A. C.M.A. No.3407 OF 2005

JUDGMENT:

Dissatisfied with the award of Rs.39,000/- towards compensation, as against the claim of Rs.1,00,000/-, laid under Section 166(1)(a) of the Motor Vehicles Act, 1988 read with Rule 455 of the A.P. Motor Vehicle Rules, 1989, seeking enhancement of the same, petitioner preferred this Civil Miscellaneous Appeal against the order and decree, dated 18-10-2004, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - VI Additional District Judge (Fast Track Court), Nizamabad, in O.P. No.657 of 2000.

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 Minidor Auto-rickshaw bearing No.AP-25-T-7911 that involved in the accident, are respondent Nos.1 and 2, respectively.

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

4. The facts, in brief, are that on 11-05-2000 at about

6-30 p.m., while the petitioner along with others was going in an auto-rickshaw bearing No.AP-25-T-7911 from Bardipur to Nizamabad, on the way at Boregaon bridge, since the driver of auto-rickshaw drove it in a rash and negligent manner, the auto-rickshaw turned upside down, resulting in injuries to the petitioner. Therefore, she laid the claim under various heads towards special and general damages making it to Rs.1,00,000/-.

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

The 1st respondent, however, on the ground that the auto-rickshaw was insured with the 2nd respondent, claimed protection under Sections 147, 149 and 170 of the Motor Vehicles Act, 1988 and prayed to dismiss the claim, whereas the 2nd respondent while opposing the claim prayed for dismissal of the petition with costs.

6. The Tribunal framed two issues in the direction of fixing responsibility for the accident. During enquiry, the petitioner examined herself as PW.1 besides examining PW.2 Dr. G. Jaya Prakash and marking Exs.A-1 to A-9 apart from Ex.C-1. On behalf of the respondents, Senior Assistant from the 2nd respondent's office, was examined

as RW.1 and marked a copy of the insurance policy of the auto-rickshaw as Ex.B-1.

7. The Tribunal, having assessed the evidence of PW.1 supported by Exs.A-1 and A-2, certified copies of F.I.R. and charge-sheet respectively, held issue No.1 in favour of the petitioner.

On issue No.2, based on the evidence of PW.2 and Exs.A-3, A-4 and A-5, certified copy of wound certificate issued by the Government Head Quarters Hospital, Nizamabad, discharge summary and M.L.C. register issued by a private Hospital, respectively, granted a sum of Rs.15,000/- towards injuries, and towards pain and suffering for three injuries at Rs.5,000/- each and towards loss of earnings Rs.9,000/-, and, thus, awarded a total sum of Rs.39,000/- towards compensation.

8. It is the aforementioned order, which is under challenge in the instant appeal preferred by the petitioner, contending in the grounds of appeal that the Tribunal failed to consider fracture of right clavicle and injuries to ribs, scalp and abdomen tissue and the expenditure spent towards treatment, transportation, extra-nourishment, attendant charges, lodging and also loss of present and future earnings and that monthly income of the petitioner was wrongly taken and appropriate multiplier was not applied in arriving at just and proper compensation. It is also contended that the Tribunal cannot sideline medical

evidence or permanent disability without assigning any plausible reasons, and, thus, sought to grant the balance amount with interest at 12% per annum on the entire compensation.

9. Heard Sri K. Sarala Mahender Reddy, learned counsel for the petitioner (appellant), and Sri Nisaruddin Ahmed Jeddy, learned counsel for respondent No.2.

10. As seen from the record, respondent No.1, owner of the auto-rickshaw, refused to receive notice, and none appears on his behalf.

11. Perused the order under challenge and other material available on record.

12. The short point that arises for consideration is whether the petitioner is entitled to enhancement of compensation granted by the Tribunal?

13. The Tribunal, somehow, overlooked the fact that the petitioner sustained three (3) fractures. Ex.A-3 is the wound certificate issued by Government Head Quarters Hospital, Nizamabad, which shows description of the injuries, as under:

“1. Haematoma 7 x 5 cms on scalp, grievous in nature.

2. Fracture of right clavical, grievous in nature.

3. Soft tissues abdomen torned, grievous in nature.”

On one hand, the Tribunal while holding that Exs.A-4 to A-8 cannot be believed, however, granted Rs.15,000/- towards three injuries at Rs.5,000/- per injury as found in Ex.A-3, by discarding Exs.A-4 to

A-8. The first injury, which is a grievous one, is on scalp. The second injury is fracture of right clavicle and the third injury is again a grievous injury on abdomen. Keeping in view, the nature of injuries sustained by the petitioner, even discarding 25% disability set up by the petitioner, still, he is entitled to Rs.15,000/- per injury, and, thus a sum of Rs.45,000/- is granted for three injuries. This apart, the petitioner is entitled to Rs.5,000/- towards extra-nourishment and Rs.5,000/- towards transportation and attendant charges. Further, the sums of Rs.15,000/- and Rs.9,000/- awarded by the Tribunal towards medical expenses and loss of earnings, respectively, are maintained.

14. Thus, the petitioner is entitled to a total sum of Rs.79,000/- (Rupees seventy nine thousand) as against Rs.39,000/- granted by the Tribunal, towards compensation and the same is accordingly granted, with interest at 7.5% per annum from the date of petition till realisation, as against 9% granted by the Tribunal, on the entire compensation, as per the decision of the Hon'ble

Apex Court in **Rajesh and others v. Rajbir Singh and others**^[1]. The point is accordingly answered.

15. 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 indicated above. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

February 23, 2015.

PV

^[1] 2013ACJ1403 = 2013(4)ALT35