

HON'BLE SRI JUSTICE A. SHANKAR

NARAYANA

M.A.C.M.A. No.2049 OF 2005

JUDGMENT:

Having got dissatisfied with the award of Rs.13,750/- (Rupees thirteen thousand seven hundred and fifty) as against the claim of Rs.1,04,000/- (Rupees one lakh and four thousand) laid under Section 166(1)(a) of the Motor Vehicles Act, 1988, (for short 'the Act'), by order and decree, dated 16-03-2005, in O.P. No.987 of 2003, on the file of the learned Chairman, Motor Accidents Claims Tribunal – cum – V Additional District Judge, Nizamabad, the instant appeal is preferred by the petitioner seeking enhancement.

2. The appellant herein is petitioner in the O.P. before the Tribunal, while respondent Nos.1 and 2, who are owner and insurer of Tipper bearing registration No.AP 16W 2614 respectively, are respondent Nos.1 and 2, respectively.

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

4. The facts, in brief, are that on 12-11-2002, while the petitioner was driving the lorry bearing registration No.ABK 8818 from Mancherla to Balkonda, with a load of cement and when it reached near Balkonda village shivar, at about 8.30 a.m., a tipper bearing registration No.AP 16W 2614 driven at high speed in a rash and negligent manner came in opposite direction and hit the lorry, due to which, the petitioner claims that he sustained grievous injuries and multiple injuries all over his person. It is

according to him that he was immediately shifted to Government Civil Hospital, Balkonda, for treatment and from there he was referred to Government Headquarters Hospital, Nizamabad, where he was treated as inpatient, during which time, rods were inserted in the right leg and knee. He also claims that he was taken to private hospital for further treatment and incurred an amount of Rs.80,000/- towards medical expenses. He claims that even on the date of filing the claim petition, he was taking treatment under a private doctor and spent huge amount towards medical expenditure. Thus, he has shown amounts under various heads claiming a total amount of Rs.13,53,000/- but, states that he was limiting his claim to Rs.1,04,000/- in *lump sum* and sought the said amount against respondent Nos.1 and 2, who are owner and insurer of the Tipper, as compensation.

5. Respondent No.1, owner of the tipper, remained *ex parte* before the Tribunal.

6. Respondent No.2 – Insurance Company filed counter opposing the claim by raising various pleas. Finally, stating that the amount sought is high and excessive, requested to dismiss the claim petition with costs.

7. The Tribunal based on the said pleadings, framed three issues in the direction of fixing responsibility for the accident.

8. During inquiry before the Tribunal, the petitioner examined himself as PW.1 and also examined one Dr. S. Prakash as PW.2 and marked Exs.A-1 to A-33 to substantiate his claim, whereas, on behalf of respondent No.2, no witnesses were examined, but, however, copy of insurance policy was marked as

Ex.B-1 on consent.

9. The Tribunal having heard arguments recorded the finding on issue No.1 that due to rash and negligent driving of the driver of the tipper, the accident has occurred and, accordingly, answered the said issue. On issue No.2, touching determination of compensation, by referring to the description of injury as contained in Ex.A-3, and finding that the petitioner sustained three simple injuries and one grievous injury that being fracture of right patella; and also taking into consideration that petitioner has undergone treatment as inpatient from 12-11-2002 to 25-11-2002; taking assistance of the entries in the second schedule appended to Section 163-A of the Act; for each simple injury granted Rs.1,000/- and for grievous injury granted Rs.5,000/-; besides granting Rs.3750/- towards loss of temporary earnings @ Rs.1250/- per month as monthly earnings on the ground that the petitioner must have become disabled to pursue his avocation for at least three months; and also awarding Rs.2,000/- towards extra nourishment. Thus, the Tribunal has granted a total sum of Rs.13,750/- with interest at 9% per annum thereon from the date of petition till realization.

10. It is the aforesaid order which is under challenge in the instant appeal, contending in the grounds that the Tribunal has not properly appreciated the evidence let in by the petitioner -appellant and the amount granted by the Tribunal is very meager and, therefore, sought to grant balance amount.

11. Heard Sri K. Sarala Mahender Reddy, learned counsel for the appellant. No representation for respondent No.2 –

Insurance Company. Respondent No.1, though, served with notice, none appears for him.

12. The factual aspect is not in dispute. Even the petitioner sustaining three simple injuries and one grievous injury is also not in dispute.

13. The only point that arises for consideration is, whether the amount granted by the Tribunal as compensation is just and adequate?

14. Perused the evidence on record and the order passed by the Tribunal which is under challenge herein. As seen from the contents of Exs.A-3 and A-33, the petitioner sustained three simple injuries. The Tribunal has granted Rs.1,000/- basing on the entries in the second schedule appended to Section 163-A of the Act. The claim was laid under Section 166 of the Act. Certainly, the same cannot be equated except to the extent of taking multiplier as guideline as per the decisional law of the Hon'ble Supreme Court which was holding the field when the order under challenge was rendered. Therefore, the petitioner is entitled to Rs.3,000/- for each simple injury making it to Rs.9,000/-.

15. Concerning grievous injury, the Tribunal again basing on the second schedule, for injury as well as pain and suffering put together, keeping in view, the fact that the has undergone the treatment for 12 to 14 days in the hospital as inpatient, it would be reasonable to award a sum of Rs.20,000/- as against Rs.5,000/- granted by the Tribunal. Towards pain and suffering, no amount was granted by the Tribunal. When the petitioner sustained grievous injury, more particularly, when the Tribunal has even

computed the amount towards temporary loss of earnings, certainly, the petitioner is entitled to the compensation for pain and suffering. In that direction, a sum of Rs.10,000/- is granted. Towards extra nourishment, the Tribunal has granted only Rs.2,000/- which requires enhancement and, therefore, a sum of Rs.5,000/- is granted against the amount of Rs.2,000/-. Towards temporary loss of earnings, the Tribunal has taken the second schedule which prescribed Rs.15,000/- per annum for a non-earning member, and that notional income was considered by the Tribunal which ought not to have been done. It is a fact that the petitioner was driving the lorry which fact was, somehow, ignored by the Tribunal and the accident has occurred in the month of November, 2002. Therefore, viewing that the petitioner as a driver was earning a total sum of Rs.3,000/- per month, for three months, he is entitled to Rs.9,000/- and accordingly, the same is granted as against Rs.3750/- awarded by the Tribunal. Towards attendant charges, a sum of Rs.2,000/- is granted and towards transport charges, a sum of Rs.1,000/- is granted. Thus, in all, the petitioner is entitled to Rs.56,000/- as compensation.

16. Concerning the rate of interest, the Tribunal granted it at 9% per annum. The same is not disturbed. But, however, on the enhanced compensation, interest is granted @ 7.5% per annum from the date of petition till realization, as per the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**^[1].

17. In the result, the appeal is allowed, and the order and decree, dated 16-03-2005, in O.P. No.987 of 2003, passed by the

Tribunal, are modified enhancing compensation to Rs.56,000/- (Rupees fifty six thousand) from Rs.13,750/- with interest at the rate of 9% per annum on the amount of Rs.13,750/- granted by the Tribunal and at the rate of 7.5% per annum on the enhanced amount of Rs.42,250/- from the date of petition till realization. There shall be no order as to costs.

18. As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

November 25, 2015.

Mgr

[\[1\]](#) . 2013 ACJ 1403