

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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M.A.C.M.A. No.974 of 2005

JUDGMENT:

Dissatisfied with the amount of Rs.75,600/- granted as compensation by the order dated 09.03.2004 in M.V.O.P.No.503 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, Kurnool (for short, 'the Tribunal') as against the claim of Rs.1,50,000/- laid under Sections 140 and 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), for the injuries sustained by the petitioner in a road accident, the instant appeal is preferred seeking enhancement of compensation.

2. The appellant herein is the petitioner, while the respondent Nos.1 and 2, who are the owner and insurer of the accident vehicle respectively, were respondents in the original petition.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts in brief are that on 19.07.2001 at about 8-00 a.m., the petitioner started to visit his native village Pulikal, in an auto bearing registration No.AP 11V 2964 and when it reached Medikonda village at about 8-30 a.m., since the driver of the said auto drove the same in a rash and negligent manner and unable to control the speed of the vehicle, it turned upside down, resulting in grievous injuries to the petitioner and he was shifted to Government Hospital. He states that he was treated as an inpatient and he sustained fracture of shaft of right femur U/3 short oblique and other injuries and spent Rs.30,000/- towards medical expenses, and, hence, sought compensation from the respondent Nos.1 and 2, who are the owner and insurer respectively.

5. Respondent No.1-owner of the accident vehicle, despite subsisting service also, did not appear before the Tribunal. Therefore, the Tribunal set him *ex parte* by the order dated 28.08.2003. Respondent No.2 opposed the claim contending that the injuries sustained by the petitioner were simple in nature and he did not sustain any permanent disability, while contending that the compensation claimed is highly

excessive and exorbitant. It is also pleaded that the driver of the auto was not possessing valid driving licence to drive the auto, which is a transport vehicle, though, he possesses only LMV licence, and finally, sought to dismiss the claim.

6. Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry, the petitioner examined himself as P.W.1 besides examining Dr. B.Chandranna as P.W.2 and marked Exs.A.1 to A.5 to substantiate his claim; whereas, on behalf of respondent No.2, its Assistant Administrative Officer and Junior Assistant of R.T.O. Office were examined as R.Ws.1 and 2 respectively, to substantiate the violation of conditions of the policy that the auto driver was possessing a valid driving licence only to drive a non-transport vehicle, but he was driving the transport vehicle transporting the passengers, and marked Exs.B.1 and B.2, which are copies of insurance policy and driving licence.

7. The Tribunal, on appraisal of evidence, both, oral and documentary, let in by the petitioner, held issue No.1 in favour of the petitioner finding that only due to rash and negligent driving of the driver of the auto, the accident had occurred; and on issue No.2, basing on the nature of injuries described in Ex.A.2 and finding that out of nine injuries, injuries 1, 5, 6 and 7 were grievous, whereas, injuries 2, 3, 4 and 8 were simple in nature, granted Rs.40,000/- towards pain and suffering for both the grievous and simple injuries. The Tribunal granted Rs.5,000/- towards medical expenses, disbelieving the bunch of medical bills covered by Ex.A.5 for the reason that some of the bills were relating to the dates 14.10.2003, 20.10.2003, 27.10.2003, 19.10.2003 and 16.10.2003, though the accident had occurred on 19.7.2001, and, thereby, granted only a sum of Rs.5,000/- towards medical expenses. The Tribunal, towards permanent disability, though, observed in paragraph-8(iii) under issue No.2, when the petitioner has not mentioned in the petition as to the permanent disability he suffered and not asserted as to the definite percentage of disability, still, basing on the evidence of P.W.2, taken the total disability at 10% for shortening of lower limb about one inch, and taking the daily wage at Rs.50/- and Rs.1,500/- per month, arrived at Rs.18,000/- per annum, taking the age of the deceased at 32 years applied multiplier '17' and worked out the loss of earning capacity at Rs.30,600/- towards 10% of partial permanent disability. Thus, the Tribunal granted a total sum of Rs.75,600/- as compensation. The Tribunal has also discussed in paragraph-9 as to the violation complained by the 2nd respondent-Insurance Company, but however,

in view of the decision of the Hon'ble Supreme Court in **New India Assurance Company Limited, Shimal vs. Kamla and others**, rejected the stand of the Insurance Company, and, thereby held that respondent Nos.1 and 2 are jointly and severally liable to pay compensation.

8. It is the aforesaid order which is under challenge in the instant appeal, filed under Section 173 of the Act, contending in the grounds of appeal that the Tribunal taken the daily wage at Rs.50/-, though, the petitioner was earning Rs.4,000/- and the Tribunal wrongly taken the partial permanent disability at 10% as against 30% spoken to by P.W.2, and, therefore, sought to grant the balance amount.

9. Heard Sri A.Jayasankar Reddy, learned counsel for the appellant-claimant. No representation for the 2nd respondent-Insurance Company. It is recorded in the grounds of appeal that the 1st respondent-owner of the vehicle is not a necessary party to the instant appeal. It is not in dispute that the 1st respondent-owner of the vehicle remained *ex parte* before the Tribunal. Therefore, his absence would not make any difference in deciding the controversy in the instant appeal.

10. The short question that arises for consideration in the instant appeal is, whether the amount awarded by the Tribunal is not just and adequate and requires to be enhanced?

11. Perused the order under challenge and the evidence on record adduced by the petitioner, both, oral and documentary. As seen from Ex.A.2, wound certificate relating to the petitioner, the injuries 1, 5, 6 and 7 were grievous, whereas the other injuries are simple in nature. The description of injuries, as reflected in Ex.A.2, including the opinion, is as follows:

"1. Lacerated wound of size 3 x 3 cm medial side of left ankle.

2. Abrasion of size 7 x 4 cm medial side of left leg.

3. Abrasion of size 7 x 1 cm front of left leg.

4. Abrasion of size 2 x .5 cm left side of left ankle.

5. Abrasion 5 x 2 cm over left knee.

6. Ecchymosis front of left thigh and pain and tenderness.

7. Ecchymosis over right thigh and pain and tenderness.

8. Lacerated wound of size 1 x .5 over right side of the nose.

9. Pain of both lower limbs.

Opinion: I am of the opinion that the injury Nos.1, 5, 6 and 7 are grievous and other injuries 2, 3, 4, 8 and 9 are simple in nature and the age of the wounds are 6 hours prior to my examination."

Thus, as seen from the contents of Ex.A.2, wound certificate and the opinion of the doctor, the petitioner sustained fracture to his right femur, right pelvic, left femur with fracture to the tibia both condylar and also tibia and fibula of left ankle. Thus, when viewed the amount granted by the Tribunal for the injuries both simple and grievous at Rs.40,000/- appears to be on lower side towards pain and suffering. Therefore, the same is enhanced to Rs.60,000/-. Towards medical expenses, though, the amount claimed was Rs.30,000/-, but the reason assigned by the Tribunal cannot be faulted with in granting only Rs.5,000/-, since some of the bills relate to two years subsequent to the date of accident, without there being any explanation as to whether the petitioner has undergone further treatment or further surgery during the month of October, 2003. So far as 10% partial permanent disability taken by the Tribunal as against 30% spoken to by P.W.2 is concerned, P.W.2 assessed the partial permanent disability at 30% for shortening of one inch of left lower limb, but the Tribunal has taken 10% disability as can be gathered from the discussion mentioned in paragraph-8(iv) of the order. The Tribunal has taken the income of the petitioner at Rs.50/- per day, since there is no proof to show that the petitioner was earning Rs.4,000/- per month and the same cannot be faulted with, and, therefore, the amount of Rs.30,600/- arrived at by the Tribunal is maintained. However, the Tribunal has not granted any amount towards extra nourishment. Therefore, the petitioner is entitled to a sum of Rs.10,000/- towards extra nourishment, keeping in view the injuries sustained by the petitioner. Even towards transport charges, a sum of Rs.3,000/- is granted and towards attendant charges, a sum of Rs.5,000/- is granted. This apart, the petitioner must have been disabled for a period of atleast three months for the injuries sustained by him, and, thus, he must have suffered loss of temporary earnings @ Rs.1,500/- per month and for six months a sum of Rs.9,000/- is granted under the said head.

12. Thus, the petitioner is entitled to a total sum of Rs.1,22,600/- (Rupees one lakh twenty two thousand and six hundred) as against Rs.75,600/- granted by the Tribunal, towards compensation and the same is accordingly granted, with interest

at 7.5% per annum on the entire amount from the date of petition till realisation, as against 9% granted by the Tribunal, as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others.**

13. Accordingly, the instant appeal is allowed in part modifying the order passed by the Tribunal, by enhancing the compensation and reducing the rate of interest, as indicated above, and confirming the same in all other respects. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

20th March, 2015

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