

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

-
M.A.C.M.A. No.487 of 2005

JUDGMENT:

Dissatisfied with the amount of Rs.89,941/- granted as compensation by the order dated 16.11.2004 in O.P.No.1548 of 2000 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-V Additional Chief Judge, City Civil Court, Hyderabad (for short, 'the Tribunal') as against the claim of Rs.3,50,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') for the injuries sustained by the appellant-petitioner, the instant appeal is preferred.

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 are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts in brief are that on 15.08.1999 at about 9-00 a.m., while the petitioner was proceeding on his motorcycle to Uppal from Ramanthapur, an auto rickshaw bearing registration No.AP 28U 1606 driven by its driver in a rash and negligent manner at high speed, dashed his motorcycle, due to which he fell down and sustained injuries. The concerned police also registered a case in Crime No.278 of 1999 against the driver of the auto. The petitioner stating that due to the accident, he spent amount for his treatment and medicines, sought a sum of Rs.3,50,000/- from the respondent Nos.1 and 2, who are the owner and insurer of the auto.

5. Before the Tribunal, the 1st respondent-owner of the auto remained *ex parte* and the 2nd respondent-insurer opposed the claim

by raising various pleas and finally sought to dismiss the claim contending that the petitioner did not sustain any permanent disability.

6. Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry before the Tribunal, the petitioner examined herself as P.W.1 besides examining Dr.K.V.Ramakantha Rao as P.W.2 and marked Exs.A.1 to A.8; whereas on behalf of the 2nd respondent-Insurance Company, no witnesses were examined, but a copy of insurance policy was marked as Ex.B.1, on consent.

7. The Tribunal, on appraisal of evidence, both, oral and documentary, let in by the parties, held issue No.1 in favour of the petitioner. On issue No.2, so far as the determination of compensation is concerned, the Tribunal by taking into consideration the sufferance undergone by the petitioner and the evidence of P.W.2-Medical Officer as to the nature of injuries and the surgery undergone by him and taking into consideration the bunch of medical bills, awarded Rs.61,200/- as against the claim of Rs.1,56,000/- towards permanent disability, Rs.15,000/- as against Rs.40,000/- towards pain and suffering, Rs.10,541/- as against Rs.75,000/- towards extra nourishment and medicines, Rs.500/- as against Rs.2,000/- towards transport to hospital and Rs.3,000/- as against Rs.75,000/- towards loss of earnings, and, thus, a total amount of Rs.89,941/- with interest at 9% per annum.

8. Aggrieved of the aforesaid order, the petitioner preferred the instant appeal contending in the grounds of appeal that the Tribunal did not properly appreciate the evidence of P.W.2 as to the disability, and, therefore, sought to enhance the compensation amount by granting balance amount.

9. Heard Sri Mulugu Krishna Reddy, learned counsel for the appellant, and Sri Somanchi Venkateswarlu, learned counsel for the 2nd respondent. None represents the 1st respondent.

10. Perused the order under challenge and the evidence, both, oral and documentary, let in by the parties. The evidence of P.W.2 in fact was elaborately dealt with under issue No.2 by the Tribunal in issuing disability certificate Ex.A.5 and the disability mentioned at 80% since the right hand of the petitioner was totally became dysfunctional. The Tribunal by observing that the disability spoken to by P.W.2 and assessed by him is only of physical disability and P.W.2 in his evidence stated that except the right hand of the petitioner other parts of the body were perfectly alright and thereby taking disability at 20% as against 80% and by taking the monthly earnings at Rs.1,500/- since there is no definite evidence let in by the petitioner that he was earning Rs.5,000/- per month, applied multiplier '17' and arrived at Rs.61,200/- towards permanent disability.

11. As seen from the order under challenge, the evidence of P.W.2, thus, was not discarded and only the disability was not accepted at that percentage as mentioned by P.W.2 but it was reduced to 20%. The evidence of P.W.2 would show that he is Orthopaedic Surgeon and he examined the petitioner on 29.04.2003 and found three old injuries to (R) humerus and right ulna plating right and R-nailing (R) ulna done; brachial palsy (R) with loss of functions of shoulder, elbow and wrist; and the disability on MC Bride Scale is 80% and assessed disability at 80%, and he was cross-examined by the learned counsel for the Insurance Company before the Tribunal and he admits that both the fractures of the right arm bone and humerus and right ulna were operated already and well united. He has also stated that apart from the fractures, the petitioner has got brachial plexus resulting in loss of

junction at right shoulder, right elbow and right wrist and the injury to the nerve plexus does not have a good prognosis even if it is treated in best hospitals, if there is amputation to hand the disability would be 90%, except to the right hand of the petitioner the other parts of the body were perfectly alright, but he cannot use his right hand at all for any work and it is difficult for him (P.W.2) to assess the loss of earning capacity of the petitioner, but he has only assessed the physical disability and he denied the suggestion that he has exaggerated the disability to help the petitioner. However, as seen from the evidence of this witness, it definitely indicates that the right hand of the petitioner became dysfunctional totally and with disability the petitioner has to suffer throughout his life. Therefore, the Tribunal was not right in just reducing it to 20% from 80% without assigning any reasons. The mere reason that other parts of the body were perfectly alright, as stated by P.W.2, cannot be a ground that percentage of disability is only 20%. The Tribunal granted Rs.61,200/- by adopting multiplier '17' towards permanent disability, but the petitioner claimed Rs.1,56,000/- under the said head. Therefore, a sum of Rs.1,56,000/- is granted to the petitioner under the said head. The Tribunal granted Rs.15,000/- towards pain and suffering, which need not be disturbed. Towards extra nourishment and medicines, the Tribunal granted Rs.10,541/- as against the claim for Rs.75,000/-. The evidence on record would show that Ex.A.6 is the bunch of medical bills for Rs.46,674/-. The petitioner has taken treatment in Medicare Hospital and spent Rs.16,475/-, covered by Ex.A.6 bunch. Since the doctor was not examined from the Medicare Hospital, the Tribunal did not grant the said amount and awarded Rs.10,541/-. Therefore, as against Rs.10,541/-, the amount of Rs.46,674/- covered by Ex.A.6 bunch of medical bills is granted. Towards transport charges, Rs.500/- was granted by the Tribunal, which does not require any enhancement. Towards loss of earnings, Rs.3,000/- was granted by the Tribunal for two months. The petitioner

was treated as an inpatient from 15.08.1999 to 28.08.1999 for 13 days spell, and, therefore, the same is also confirmed towards loss of earnings. Thus, the petitioner is totally entitled to a sum of Rs.2,21,174/-. The learned counsel for the petitioner, no doubt, contended that future prospects also have to be taken into consideration in the case of injuries, on account of total disability of right upper arm, as the petitioner is unable to pursue his avocation. But there is no material to substantiate that submission of the learned counsel for the petitioner. Therefore, as against the award of Rs.89,941/-, a sum of Rs.2,21,174/- is granted by way of enhancement, which appears to be just and adequate in the circumstances. The Tribunal granted interest at 9% per annum, but however, 7.5% per annum is granted in view of the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**^[1].

12. In the result, the appeal is allowed in part and the order and decree dated 16.11.2004, passed by the Tribunal in O.P.No.1548 of 2000 is modified, enhancing the compensation to Rs.2,21,174/- (Rupees two lakhs twenty one thousand one hundred and seventy four) from Rs.89,941/- (Rupees eighty nine thousand nine hundred and forty one), with interest at 7.5% per annum from the date of petition till realization throughout the award. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

20th February, 2015

siva

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