

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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M.A.C.M.A. No.1421 OF 2005

JUDGMENT:

Having got dissatisfied with the amount of Rs.48,750/- granted as compensation by the order dated 04.08.2004 in O.P. No.898 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-Special Judge for trial of cases under E.C.Act-cum-III Additional Metropolitan Sessions Judge-cum-XVII Additional chief Judge, Hyderabad (for short, 'the Tribunal') as against the claim of Rs.1,50,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), for the injuries sustained by the appellant-petitioner in a road accident, the instant appeal is preferred under Section 173 of the Act seeking enhancement of compensation.

2. The appellant herein is the petitioner, while respondent Nos.1 and 2 herein, who are the owner and insurer of the scooter bearing registration No.AP 28H 418, respectively, were respondent Nos.1 and 2, respectively, 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 fact-situation occurring in the instant case is that on 17.03.2001, the petitioner was proceeding on his motorcycle bearing registration No.AP 28R 4380 at about 9-00 p.m., when he reached Kompally cross roads, a scooter bearing registration No.AP 28H 418 driven at high speed in a rash and negligent manner came from opposite direction and dashed the petitioner's motorcycle, due to which, he fell down and sustained fracture of upper end of tibia, fracture of neck of fibula, grievous injuries to his left elbow and left side of forehead and other bleeding injuries on his person. He was shifted in an auto to his house and on the next day, he was admitted in B.B.R.Multi Speciality Hospital at Balanagar. According to him, he

underwent surgery to his fractured bones. The Station House Officer, Kompally Police Station, also registered the case in Crime No.140 of 2001 for the offence punishable under Section 337 IPC. Claiming that he spent huge amount towards medical expenses and undergone pain and suffering on account of surgical interventions, sought a sum of Rs.1,50,000/- as compensation.

5. Respondent No.1-owner of the scooter remained *ex parte*. Respondent No.2-insurer of the scooter opposed the claim, of course, no violations were complained in the counter, however, sought to dismiss the petition.

6. Basing on the said pleadings, the Tribunal framed the following issues about the responsibility for the accident:

"1) Whether the petitioner has received injuries in the Motor Vehicle Accident, that took place on 17-3-2001 at about 9 p.m. near Kompally Cross roads, due to rash and negligent driving of the driver of the scooter bearing No.AP 28 H 418 ?

2) Whether the petitioner is entitled for compensation, if so, to what amount and from whom ?

3) To what relief ?"

7. During enquiry, the petitioner examined himself as P.W.1 besides examining two doctors as P.Ws.2 and 3 to prove the injuries sustained by him and the treatment he had undergone in two different hospitals and marked Exs.A.1 to A.9 to substantiate his claim; whereas, on behalf of respondent No.2, no witnesses were examined, but the copy of insurance policy was marked as Ex.B.1 on consent.

8. The Tribunal, on issue No.1, on appreciation of evidence on record, both, oral and documentary, let in by the parties, held that the accident had occurred only due to rash and negligent driving of the driver of the scooter, and, accordingly, recorded finding in favour of the petitioner.

9. On issue No.2, the Tribunal, on the basis of the evidence of

P.Ws.2 and 3 and Exs.A.3 to A.9, granted Rs.3,750/- towards loss of earnings for three months, Rs.20,000/- towards operation charges, Rs.10,000/- towards medical expenses on the ground that the medical bills filed by the petitioner were not supported by prescriptions issued by the concerned doctors and also granted Rs.15,000/- towards pain and suffering. Thus, in all, the petitioner was granted a sum of Rs.48,750/- with interest at 9% per annum 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 on record let in by the petitioner, more particularly, the evidence of the doctors examined as P.Ws.2 and 3. It is also stated that the Tribunal has not properly appreciated the medical bills and prescriptions and the medical expenditure met by the petitioner for the surgery he had undergone and to undergo further surgery for removal of implants and also the second surgery involving removal of steel rods. It is also stated that for six months, he was unable to move freely and had to take rest and undergo surgeries twice. It is also stated that the Tribunal has not granted any amount towards attendant charges and extra nourishment. Therefore, he sought to grant the balance amount of compensation.

11. Heard Sri Molugu Krishna Reddy, learned counsel for the appellant, and Sri Ravi Shanker Jandhyala, learned Standing Counsel for respondent No.2-Insurance Company. Despite service of notice on respondent No.1-driver of the scooter, none appears for him.

12. Learned counsel for the appellant-petitioner would submit that though, there is cogent material through oral and documentary evidence adduced by the petitioner, the Tribunal is not correct in finding that the medical bills are not supported by the prescriptions issued by the concerned doctor and, very fact that the petitioner sustained comminuted fracture of upper end of left tibia and fibula speaks that the petitioner would have been disabled for a

considerable period, and, therefore, sought to grant the balance amount.

13. On the other hand, the learned counsel for respondent No.2-Insurance Company supported the order passed by the Tribunal.

14. Now the short point that arises for consideration is, whether the petitioner is entitled to enhancement of compensation?

15. A perusal of the evidence of P.Ws.2 and 3 would clearly indicate that the petitioner had undergone surgeries twice, one for insertion of implants and another for removal of the implants. The petitioner is an agriculturist. The amount of Rs.3,750/- towards loss of temporary earnings for three months granted by the Tribunal not only appears to be low, but it was also only for a short period and the very fact that the petitioner had undergone surgical interventions twice as mentioned in the above, certainly, would reflect that he would have been disabled atleast for six months. Therefore, at the rate of Rs.2,000/- per month, a sum of Rs.12,000/- is granted for six months as against Rs.3,750/-. Concerning the amount of Rs.20,000/- granted by the Tribunal towards operation charges, the same is recorded in the medical bills filed by the petitioner. Hence, the said amount is to be equated to the expenditure incurred by the petitioner towards his further surgery. The Tribunal has not granted any amount for the injury. Hence, a sum of Rs.25,000/- is granted towards the injury, since it is comminuted fracture of both the bones. The amount of Rs.15,000/- granted by the Tribunal towards pain and suffering is not disturbed. The Tribunal has granted Rs.10,000/- towards medical expenses and the total being Rs.46,000/- and odd. The amounts of Rs.20,000/- and Rs.10,000/- granted by the Tribunal can be adjusted in the amount of Rs.46,000/- as the medical expenses met by the petitioner. Therefore, the petitioner is entitled to an additional sum of Rs.16,000/- towards medical expenses. Hence, the same is granted. Towards extra nourishment, the Tribunal has not granted any amount. Keeping in view, the nature of injuries sustained by the

petitioner, a sum of Rs.10,000/- is granted to the petitioner towards extra nourishment and also granted Rs.6,000/- towards attendant charges for a period of three months and Rs.2,000/- towards transport charges.

16. Thus, the petitioner is entitled to a total sum of Rs.1,16,000/- (Rupees one lakh and sixteen thousand) as against Rs.48,750/- granted by the Tribunal, towards compensation and the same is accordingly granted. So far as the interest is concerned, the Tribunal granted interest at 9% per annum and the same is maintained on the amount granted by the Tribunal, but on the enhanced amount, interest at 7.5% per annum is granted from the date of petition till realization as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**.

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

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

A. SHANKAR NARAYANA, J

25th November, 2015

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