

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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M.A.C.M.A. No.578 of 2005

JUDGMENT:

The New India Assurance Company Limited-2nd respondent in O.P.No.464 of 1999 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Khammam (for short, 'the Tribunal') preferred the instant appeal challenging the order dated 17.02.2003, whereby and whereunder the Tribunal granted a sum of Rs.1,30,000/- with interest at 9% per annum as against the claim for Rs.3,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act').

2. The 1st respondent herein is the petitioner, while the respondent No.2 and appellant herein, who are the owner and insurer of the jeep bearing registration No.AP 20T 7003 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 17.01.1999 at about 7-00 a.m., the petitioner in the instant O.P. and also the petitioner in O.P.No.465 of 1999 on the same file were proceeding to Khammam from Vijayawada on Bajaj 45 Motorcycle bearing registration No.AP 20E 4091 and when they reached the outskirts of Kanchikacherla, a jeep bearing registration No.AP 20T 7003 proceeding towards Vijayawada driven by its driver in a rash and negligent manner and at high speed dashed their motorcycle, due to which, both of them sustained injuries and they preferred the claims in O.P.Nos.464 and 465 of 1999 under Section 166 of the Act before the Tribunal. The petitioner claims that he spent

Rs.1,20,000/- towards medical and other expenses as he sustained multiple fractures over right foot and metatarsal and small haemorrhagic contusion right parietal of thalamus right parietal region on brain.

5. Before the Tribunal, the 1st respondent-owner of the accident vehicle remained *ex parte* and the 2nd respondent-Insurance Company opposed the claim requiring the petitioners to prove the allegations mentioned in the petition and also obtained orders under Section 170 of the Act to take out defences at an appropriate time.

6. Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry before the Tribunal, on behalf of the petitioners, P.Ws.1 to 4 were examined and marked Exs.A.1 to A.18 and on behalf of the contesting 2nd respondent-Insurance Company, no witnesses were examined but a copy of insurance policy was marked as Ex.B.1.

7. The Tribunal, on issue No.1, tendered finding that only due to the rash and negligent driving of the jeep driver, the accident had occurred. The Tribunal, on issue No.2, so far as the claim of the petitioner is concerned, found compound fracture of both bones of right leg, and, basing on the evidence of Medical Officer examined as P.W.3, on commission, and taking into consideration the relevant factors, granted a sum of Rs.80,000/- for the injuries, Rs.5,000/- towards sufferance for four months as the petitioner was bedridden, Rs.10,000/- for loss of academic year, Rs.15,000/- towards pain and suffering, Rs.11,000/- towards medical expenses as per Ex.A.8, Rs.9,000/- towards future treatment, and, thus, a total sum of Rs.1,30,000/- was granted by the Tribunal.

8. Aggrieved of the said award, the instant appeal is preferred by

challenging the quantum of compensation, contending in the grounds of appeal, that without there being any convincing and legally acceptable documentary evidence, the Tribunal awarded the amount under various heads, and, therefore, sought to set aside the same.

9. Heard Sri Naresh Byrapaneni, learned Standing Counsel for the appellant. No representation on behalf of the 1st respondent. It is recorded in the cause title that the 2nd respondent herein is not a necessary party.

10. Learned Standing Counsel for the appellant-Insurance Company contends that the amount granted by the Tribunal is arbitrary, when viewed in the light of the amount of compensation granted in the other case by the very same Tribunal, i.e., O.P.No.465 of 1999, though, he sustained two fractures, compensation of Rs.20,000/- alone was granted. It is also his submission that interest at 9% per annum granted by the Tribunal is very high and excessive, and, therefore, sought to reduce the interest.

11. Perused the order and the evidence adduced by the petitioner, both, oral and documentary. As seen from the evidence of P.W.3 Dr.K.V.V.Satyanarayana Murthy and the contents of Ex.A.3, in which, the description of injuries is shown, the petitioner sustained compound fracture of both the bones of right leg, which is grievous in nature and the petitioner has undergone external fixation to the right leg and wires fixation of right foot, besides grafting being done to the skin, and the wires were removed from the foot and external fixations were removed on 29.07.1999 and the doctor P.W.3 assessed the disability at 30% to 40%. The other documents would show the amounts incurred by the petitioner, which also include prescriptions, more particularly, Ex.A.7 findings recorded so far as the injury to head and brain are concerned in the form of report and the petitioner was bedridden for four months

and lost academic year, and on the date of accident, he was prosecuting B.Sc. second year. The Tribunal granted the amounts after proper appreciation of evidence placed by the petitioner, both, oral and documentary, and, therefore, there is no legal infirmity in awarding the amounts, which are just and reasonable. However, so far as the interest is concerned, in view of the decision of the Hon'ble Apex Court in ***Rajesh and others v. Rajbir Singh and others***^[1], the interest granted by the Tribunal at 9% per annum is reduced to 7.5% per annum on the award of compensation granted by the Tribunal. Only to that extent, the order of the Tribunal is modified.

12. In the result, the appeal is partly allowed and the order and decree dated 17.02.2003 passed by the Tribunal in O.P.No.464 of 1999 is modified only to the extent of interest, reducing it from 9% to 7.5% per annum on the amount of compensation granted by the Tribunal. 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

04th February, 2015.

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^[1] 2013 ACJ 1403