

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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M.A.C.M.A. No.1508 of 2005

JUDGMENT:

Dissatisfied with the amount of Rs.39,050/- granted as compensation vide order dated 05.08.2004 in O.P.No.1849 of 2000 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-Additional Special Judge For SPE & ACB Cases-cum-V Additional Chief Judge, City Civil Court, Hyderabad (for short, 'the Tribunal') as against the claim of Rs.1,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') for the injuries sustained by the 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 25.06.2000 at about 5-30 p.m., while the petitioner was riding pillion on scooter bearing registration No.ADL 5244 towards Pisalbanda side, a Maruthi van bearing registration No.AP 10M 5671 driven in a rash and negligent manner and at high speed, dashed the scooter, due to which, he fell down and sustained fractures to both legs. The concerned police also registered a case in Cr.No.72 of 2000 against the driver of the Maruthi van. The petitioner sought Rs.1,00,000/- from the respondent Nos.1 and 2, who are the owner and insurer of the Maruthi van.

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

claim by raising various pleas.

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 himself as P.W.1 besides examining Orthopaedic Surgeon of Osmania Hospital as P.W.2 and marked Exs.A.1 to A.6; but the 2nd respondent-Insurance Company has not chosen to examine any witnesses and no documents were filed.

7. The Tribunal, on appraisal of evidence of P.W.1 supported by Exs.A.1 and A.2, which are certified copies of F.I.R. and charge sheet, held issue No.1 in favour of the petitioner. On issue No.2, the Tribunal taking the income of the petitioner at Rs.50/- per day and the percentage of permanent disability at 10% and applying multiplier '16', arrived at Rs.28,800/- towards loss of earning capacity. The Tribunal also granted Rs.5,000/- towards pain and suffering, Rs.1,000/- towards damages to clothes, Rs.2,000/- towards extra nourishment, Rs.500/- towards transport charges and Rs.1,750/- towards temporary loss of earnings, and, thus, a total sum of Rs.39,050/- was granted as against the claim for Rs.1,00,000/-.

8. Aggrieved of the aforesaid order, the petitioner preferred the instant appeal seeking enhancement of the compensation contending in the grounds of appeal that the Tribunal did not properly appreciate the evidence on record, more particularly, the evidence of P.W.2 proving 20% disability and even awarding Rs.1,750/- towards loss of earnings, though, the petitioner became immobilized for six months, and sought to grant balance amount.

9. Heard Sri M.Krishna Reddy, learned counsel for the appellant-claimant, Sri D.Srinivasa Prasad, learned counsel for the 1st respondent-owner of the accident vehicle, and Sri Somanchi

Venkateswarlu, learned counsel for the 2nd respondent-insurer of the accident vehicle.

10. Perused the order under challenge and the evidence on record. P.W.2 is an Orthopaedic Surgeon working as Head of the Department in Osmania General Hospital. His evidence shows that team of doctors treated the petitioner on 25.06.2000 and the petitioner was admitted in the hospital with Grade-II compound comminuted fracture of both bones middle lower third, right leg grade II compound fracture of both bones middle lower third left leg with head injury and Orif with Dcp was done to the right leg, Mrd and A/k was done to the right leg and he was discharged from the hospital on 31.07.2000 with an advice not to bear weight until further instructions and follow-up treatment. The petitioner was examined again by him on 02.01.2003, X-ray shows the left Tibia was mal-united with a shortening and mild restriction of movements at left ankle and assessed the permanent disability at 20%. Nothing is brought out in the cross-examination of P.W.2 touching the mal-united fracture of left Tibia. Thus, it is a case where the percentage of disability at 20% cannot be discarded when the evidence of P.W.2 is given due weight. However, the monthly income arrived at by the Tribunal cannot be disturbed as there is no proof of earnings at Rs.3,000/- per month from the side of the petitioner. Hence, the amount of Rs.28,800/- worked out by the Tribunal is enhanced to Rs.57,600/- (Rs.18,000/- x '16' x 20%) towards permanent disability. The amount of Rs.6,500/- claimed by the petitioner towards pain and suffering is granted as against Rs.5,000/- granted by the Tribunal. However, towards the amount of Rs.1,000/- granted by the Tribunal under the head 'damages to the clothing' is confirmed. The amount of Rs.2,000/- granted by the Tribunal under the head 'extra nourishment' is not disturbed as the petitioner claimed the same amount under the said head. The Tribunal granted Rs.500/-

towards transport charges, which is enhanced to Rs.1,000/-. Towards loss of earnings, the Tribunal confined it only to the treatment period as inpatient from 25.06.2000 to 31.07.2000. For a considerable period, he must have been disabled to attend duty. Therefore, for six months, he is entitled to Rs.9,000/- (Rs.1,500/- x 6 months). Thus, the petitioner is totally entitled to a sum of Rs.77,100/- towards compensation as against Rs.39,050/- granted by the Tribunal. Concerning the interest, the petitioner is entitled to 7.5% per annum from the date of petition till realization on the said amount as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**^[1].

11. In the result, the appeal is allowed in part and the order and decree dated 05.08.2004, passed by the Tribunal in O.P.No.1849 of 2000 is modified, enhancing the compensation to Rs.77,100/- (Rupees seventy seven thousand and one hundred only) from Rs.39,050/- (Rupees thirty nine thousand and fifty only), with interest at 7.5% per annum from the date of petition till realization. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

25th February, 2015

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