

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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M.A.C.M.A. No. 894 of 2005

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JUDGMENT:

Aggrieved of the award of Rs.10,500/- as compensation for the injuries sustained by the petitioner, by order dated 09.02.2005 in O.P.No.200 of 2001 on the file of the Motor Accidents Claims Tribunal-cum-III Additional District Judge (FTC), Asifabad, against a claim of Rs.1,00,000/- laid under Section 166 and 163 of the Motor Vehicles Act, 1988 (for short, 'the Act'), the instant appeal is preferred seeking enhancement under Section 173 of the Act.

2. For the sake of convenience, the parties herein are hereinafter referred to as they were arrayed in the Original Petition before the Tribunal.

3. The facts in brief are that on 01.09.2000 at 1:30 P.M., the petitioner, along with others, was proceeding in an Auto bearing No.AP 9V 2458 from Indaram to Kundaram, and when the auto reached Narisingapur village bus stand, the driver of the auto since driven it at high speed in a rash and negligent manner, it turned upside down due to which the petitioner states that he received fracture of his left leg and injuries on other parts of his person and he was shifted to Government Hospital, Mancherial, and then he was shifted to Nizams Institute of Medical Sciences, Hyderabad on 16.09.2000. The petitioner claims to have spent Rs.25,000/- towards medical expenses. The police of Jaipur registered a case in Crime No.106 of 2000 under Section 338 IPC against the driver of the auto. The petitioner claims that he used to earn Rs.3,000/- per month as agriculturist and hence sought for a compensation of Rs.1,00,000/-.

4. The 1st respondent-owner of the auto remained *ex parte*. The 2nd respondent-insurer opposed the claim denying the permanent disability put forth by the petitioner.

5. Based on the said pleadings, the Tribunal framed the following three issues:

“(i) Whether the petitioner sustained injuries in the accident occurred on 1-9-00 due to rash and negligent driving of auto No.AP 9V 2458 by its driver?”

“(ii) Whether the petitioner is entitled to any compensation if so, to what amount and against whom?”

“(iii) To what relief?”

6. During enquiry, the petitioner examined himself as PW-1 and got marked Exs.A-1 to A-6. No one was examined on behalf of the 2nd respondent and no document was marked on his behalf.

7. After assessing the evidence on record, the Tribunal, on issue No.(i) found rash and negligent driving on the part of auto driver resulting in injuries to the petitioner. On issue No.(ii), the Tribunal observed that the petitioner suffered fracture to two bones of left leg, still awarded a sum of Rs.2,500/- towards pain and suffering, Rs.3,500/- towards medical expenses and Rs.4,500/- towards loss of earnings; thus awarding a total sum of Rs.10,500/-.

8. Aggrieved of the same, the instant appeal is preferred contending in the grounds of appeal that the Tribunal did not properly appreciate the evidence on record and granted meager amount despite his sustaining fracture to both bones of left leg, and, therefore, sought to grant the balance amount. It is also stated that the petitioner was bed ridden for six months and lost earnings for six months on account of the injury.

9. Heard Sri S. Surender Reddy, learned counsel for the petitioner, and perused the order under challenge and the evidence on record let in by the petitioner. On behalf of the 2nd respondent, there is no representation. Though notice was not served on the 1st respondent, but it was addressed to the very same address as mentioned in the cause title in the original petition, and therefore, non-service is of no

consequence since he remained *ex parte* and suffered the decree.

10. Ex.A2 is the wound certificate which reflects that the petitioner sustained fracture to both bones of left leg and described as grievous injury. It is no doubt that the medical officer was not examined to prove the injury, but it was admitted that the petitioner was admitted in Nizams Institute of Medical Sciences (for short, 'NIMS') and produced bills from Nizams Pharmacy. Though, the discharge summary and out-patient card issued by the NIMS, somehow, were not marked through PW1 though, his name is to be found in these documents. Be that as it may, the petitioner sustaining fracture to both bones is not in dispute. Therefore, keeping in view, the nature of injury sustained by the petitioner, including the pain and suffering, a sum of Rs.20,000/- is granted as against Rs.2,500/- granted by the Tribunal. The Tribunal, while considering Ex.A5 made a mention that the medical bills issued by NIMS show Rs.4,000/- and granted Rs.3,500/-. Therefore, an amount of Rs.4,000/- is granted towards medical expenses as against Rs.3,500/-. Towards temporary loss of earnings, the Tribunal granted Rs.4,500/-, taking into consideration Rs.2,000/- as monthly income. But the fact that one of the main lower limbs was affected rendering the petitioner immobilised for considerable period and for six months he must not have been able to pursue his ordinary activities, in which case he is entitled to Rs.12,000/- as against Rs.4,500/- granted by the Tribunal. Towards extra nourishment and transport, no amount was granted by the Tribunal. Keeping in view the nature of injury, Rs.5,000/- towards extra nourishment and Rs.5,000/- towards transport charges are granted.

11. Thus, the compensation is enhanced to Rs.46,000/- from Rs.10,500/- granted by the Tribunal. So far as the interest is concerned, the Tribunal granted 9% interest per annum, which requires modification as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**. Therefore, the interest is reduced to 7.5% per annum from 9% per annum on the amount granted by the Tribunal. Thus, interest at 7.5% per annum is granted on Rs.46,000/- from the date of petition till realization.

12. Accordingly, the appeal is allowed in part. No order as to costs. Miscellaneous

petitions, if any, pending in this appeal shall stand closed.

JUSTICE A. SHANKAR NARAYANA

27th February, 2015

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THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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