

**HONOURABLE SRI JUSTICE A. SHANKAR
NARAYANA**

M.A. C.M.A. No.2304 OF 2005

JUDGMENT:

The instant appeal is preferred by the petitioner seeking enhancement of compensation since only an amount of Rs.11,750/- was granted by the learned Chairman, Motor Accidents Claims Tribunal - cum - V Additional District Judge, Nizamabad, with interest at 9% per annum, by the order and decree, dated 23.03.2005, in O.P. No.1481 of 2001, for the grievous and simple injuries sustained by him in a road accident though, he laid the claim for grant of Rs.1,50,000/- under Section 166(1)(a) of the Motor Vehicles Act, 1988 (for short 'the Act').

2. The appellant herein is the petitioner in the O.P. before the Tribunal, while respondent Nos.1 and 2, who are owner and insurer of the Tempo bearing No.AP-25-T-83890 that involved in the accident, are respondent Nos.1 and 2, respectively.

3. For the sake of convenience, the parties are hereinafter referred to as they arrayed in the O.P. before the Tribunal.

4. The facts would show that on 29.01.2000, while the petitioner was travelling in a bajaj Tempo bearing

No.AP-25-T-8389 from Tadem village to Nizamabad, at about 12.15 a.m. (night), near Ali Sagar Garden in the limits of Tanakalan Village, since the tempo driver drove it in a rash and negligent manner, it went off the road and turned upside down, as a result, petitioner sustained fractures to his left leg, left forearm and other injuries and immediately he was shifted to Government Hospital, Nizamabad, and treated as inpatient. He also claims that he was taking treatment in private hospitals and spent amount towards extra-nourishment, transport charges etc., and thus, sought Rs.1,50,000/- though, assessed the same at Rs.31,60,000/-.

5. Respondent No.1, owner of the tempo that involved in the accident, remained *ex parte* before the Tribunal.

6. Respondent No.2, insurer of the tempo, contested the claim.

7. The Tribunal, based on the pleadings, framed three (3) issues in order to determine compensation as well as negligence in taking place of the accident.

8. On behalf of the petitioner, he himself examined as PW.1 and marked Exs.A-1 to A-7. On behalf of the insurer, no witnesses were examined, but a copy of the insurance policy of the tempo involved in the accident is

marked as Ex.B-1.

9. The Tribunal having found both the issues in favour of the petitioner, granted Rs.5,000/- towards grievous injuries, Rs.1,000/- for simple injury towards pain and suffering, Rs.3,750/- towards temporary loss of earnings and Rs.2,000/- towards extra-nourishment, and, thus, granted a total sum of Rs.11,750/- with interest at 9% per annum.

10. It is the aforesaid order which is sought to be modified by granting balance compensation on the ground that the Tribunal has not properly analysed the evidence on record and overlooked the amounts spent towards medical expenses. The petitioner has also placed reliance on number of decisions mentioned in ground Nos.5, 6 and 7 of the appeal and finally sought to grant balance amount.

11. Heard Smt. K. Sarala Mahender Reddy, learned counsel for the petitioner (appellant).

12. On behalf of the insurer, though learned counsel Sri T.K. Sridhar made appearance, there is no representation on its behalf.

13. Despite service of notice on respondent No.1, insured, none appears on his behalf.

14. Perused the order and decree under challenge and the material on record.

15. Admittedly, the petitioner has not chosen to examine the medical officer who treated him. Even otherwise, the Tribunal has recorded a finding basing on the X-ray report that the injury suffered by the petitioner was grievous in nature and proved by the petitioner. The grievous injury being fracture of left ulna, when seen the amounts granted by the Tribunal, certainly, the amount of Rs.5,000/- awarded towards grievous injury is on lower side. Perhaps, the Tribunal has taken the queue from Schedule - II to Section 163A of the Act, and, therefore, the petitioner is entitled to Rs.20,000/- towards grievous injury including pain and suffering. So far as simple injury is concerned, the amount granted by the Tribunal is enhanced to Rs.3,000/- from Rs.1,000/-. The amount of Rs.3,750/- granted by the Tribunal towards temporary loss of earnings is enhanced to Rs.7,500/- keeping in view, that it must have taken six (6) months to get normalcy. The amount of Rs.2,000/- granted by the Tribunal towards extra-nourishment is enhanced to Rs.5,000/-

16. Thus, the petitioner is entitled to a total compensation of Rs.35,500/- (Rupees thirty five thousand and five hundred only) as against Rs.11,750/- awarded by the Tribunal, and the same is accordingly granted.

However, the rate of interest granted by the Tribunal at 9% per annum is maintained on the amount of Rs.11,750/- granted by the Tribunal, but, on the enhanced amount, interest at 7.5% per annum is granted in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**^[1], from the date of petition till realisation.

17. Accordingly, the Civil Miscellaneous Appeal is allowed in part modifying the impugned order and enhancing the compensation, as indicated above. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in the appeal stand disposed of.

A. SHANKAR NARAYANA, J

June 24, 2016.

PV

^[1] 2013ACJ1403 = 2013(4)ALT35