

HON'BLE SRI JUSTICE A. SHANKAR
NARAYANA
CMA No.4714 OF 2004 AND MACMA No.1410 OF
2005

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COMMON JUDGMENT:

Both these appeals are directed against the order, dated 13-08-2004, in O.P. No.417 of 2003, passed by the learned Chairman, Motor Accident Claims Tribunal - cum - District Judge, West Godavari District at Eluru (for short 'the Tribunal').

2. The former appeal is preferred by the petitioner seeking enhancement since the Tribunal granted a sum of Rs.2,35,000/-, which, in fact, is Rs.2,55,000/-, as against the claim of Rs.7,77,963.40ps. laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') read with Rule 455 of the Andhra Pradesh Motor Vehicles Rules, 1989. The latter appeal is preferred by respondent No.2 - M/s. New India Assurance Company Limited aggrieved by the quantum of compensation awarded by the Tribunal, more particularly, the amount of Rs.1,50,000/- granted towards loss of earnings due to temporary disability.

3. The appellant in the former appeal, who is respondent No.1 in the latter appeal, is the petitioner in O.P. before the Tribunal, while the appellant in the latter appeal, who is respondent No.2 in the former appeal, is respondent No.2 and respondent Nos.1, 3 and 4 in the former appeal, who are respondent Nos.2 to 4 in the latter appeal, are also respondent Nos.1, 3 and 4, respectively.

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

5. The facts, in brief, are that on 18-03-2003, respondent No.4 took the scooter bearing registration No.AHV 1764 belonging to respondent No.3 and picked up the petitioner to purchase a tractor for him and while returning from Nuzvidu to Patha Pedapadu, when they reached near the Rice Mill on Thotagudem road, an auto-rickshaw bearing registration No.AP 37V 1460 owned and driven by respondent No.1 came in opposite direction at high speed in a rash and negligent manner and hit their scooter at about 9.30 p.m.; as a result, he sustained fracture injuries to his legs. He was immediately taken to M/s. M.V. S. Accidents Hospital, Vijayawada, where he was operated twice and had undergone surgical interventions twice. According to him, he spent more than Rs.97,000/- towards medical expenses and he became

permanently disabled. Therefore, he made the driver-cum-owner of the auto-rickshaw, owner of the two-wheeler (scooter), its driver and insurer of both the vehicles being one and the same as respondent Nos.1 to 4, respectively, and sought joint and several liability in payment of compensation.

6. Respondent No.1 being owner-cum-driver of the auto-rickshaw and respondent No.2 being insurer of not only the vehicle of respondent No.1, but also the scooter of respondent No.3, filed separate counters and respondent Nos.3 and 4, who are owner and driver of the scooter, filed common counter.

i) Respondent No.1 disowned the negligence attributed to him. Respondent No.2 – insurer opposed the claim, raising various pleas. One of the pleas being that the claim petition is bad for non-joinder of necessary parties; whereas, respondent Nos.3 and 3 also opposed the claim.

7. Based on the pleadings, the Tribunal framed the following three issues about fixing the responsibility for the accident.

“1. Whether the accident occurred due to rash and negligent
driving of the Auto bearing No.A.P. 37-V-1460,
driven by

it's driver-cum-owner 1st respondent?

2. Whether the petitioner is entitled to claim any compensation?

If so, to what amount and against which of the respondents?

3. To what relief? ”

8. During inquiry before the Tribunal, the petitioner besides examining himself as PW.1, has also examined Dr. M. J. Naidu as PW.2, and exhibited Exs.A- to A-7. On behalf of respondents, respondent No.1 examined himself as Rw.1 and marked Exs.B-1 to B-3, which are attested copies of accident report, insurance policies. Even driving license of respondent No.1 was marked as Ex.X-1.

9. The Tribunal having dealt with elaborately, both, oral and documentary evidence let in by the parties, while recording the finding in favour of the petitioner on issue No.1; on issue No.2, basing on the evidence of Medical Officer examined as PW.2, granted Rs.20,000/- towards extra nourishment and transport charges; Rs.50,000/- towards medical expenses; Rs.20,000/- towards future treatment; Rs.15,000/- towards pain and suffering and Rs.1,50,000/- towards loss of temporary earnings for a period of 2 to 3 years and, thus, a total sum of Rs.2,35,000/- was granted as compensation against respondents. On perusal of order, it appears that the total

amount was wrongly calculated. When calculated the amounts granted by the Tribunal under different heads, they worked out to Rs.2,55,000/- instead of Rs.2,35,000/. Thus, treating the amount awarded by the Tribunal as Rs.2,55,000/-, the appeals are proceeded with.

10. It is the aforesaid order which is under challenge in the instant appeals by both the parties. In the former appeal, it is contended by the petitioner that the Tribunal has not properly appreciated the evidence, both, oral and documentary including medical bills, while granting compensation and that the compensation granted by it is on lower side and, therefore, sought to grant balance amount. Whereas, in the latter appeal, it is contended by the insurer that the Tribunal went wrong in awarding the compensation as it has not followed Section 168 of the Act and that the amount granted by the Tribunal is excessive and arbitrary and, therefore, sought to set aside the order and decree.

11. Heard Sri Kota Subba Rao, learned counsel for the appellant - Insurance Company in the latter appeal and incidentally respondent No.2 in the former appeal. No representation for the appellant in the former appeal and incidentally respondent No.1 in the latter appeal. In the cause title of latter appeal, it is mentioned that respondent Nos.2 to 4 are not necessary parties, whereas in the former appeal, though, service of notice was effected on

respondent Nos.1 and 4, none appears for them. Concerning respondent No.3, owner of the scooter on which the petitioner was travelling as a pillion rider, it was dismissed for default. The dismissal against him is of no consequence as he suffered decree before the Tribunal.

12. The learned counsel for the appellant in the latter appeal would contend that the Tribunal was wrong in granting Rs.1,50,000/- towards loss of earnings due to temporary disability as it is without any basis. That has been the only ground agitated by the insurer, besides asking to reduce the interest from 9% to 6%.

13. Perused the order and the material on record, both, oral and documentary, let in by the parties.

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14. The Medical Officer's evidence who was examined as PW.2, would clearly show that the petitioner had undergone two surgical interventions and he had conducted operations, and so far as disability is concerned, PW.2 has specifically stated that the petitioner had to suffer with disability for a period of three years and there would be difference in the physical appearance of the petitioner as well as in the capacity. Perhaps that would indicate that there would be some sort of deviation in his gait, as the petitioner sustained injury to his right leg

and the same was treated by fixing titanium plate. When examined the evidence of PW.2 and also the profession of the petitioner being a driver of tractor-cum-trailer, he would not be able to drive the same. Certainly, the amount of Rs.1,50,000/- granted by the Tribunal though not accepting permanent disability cannot be faulted. Thus, there is no merit in the latter appeal preferred by the Insurance Company.

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15. Coming to the claim in the former appeal seeking enhancement by the petitioner, the amount of Rs.20,000/- granted towards extra nourishment and transport charges is just and reasonable. However, towards medical expenses the amount of Rs.50,000/- granted by the Tribunal merely on the ground that though, doctor was examined, but he has not stated anything about the medical bills appears to be not convincing. It appears that the doctor was examined on commission, and the learned counsel, who appeared for the appellant before the Tribunal, somehow, must have omitted to ask the doctor by showing the medical bills. But, the assertion of the doctor as PW.2 that he conducted operations on PW.1 in their hospital is sufficient enough to hold that the amount of Rs.1,17,063.40 ps. has to be granted. It is not a case where only the claim petitioner examined himself

without examining any Medical Officer. In that view of the matter, the amount of Rs.1,17,063.40 ps. claimed by the petitioner is granted rounding it off to Rs.1,17,000/- as against the amount of Rs.50,000/- granted by the Tribunal. The amount of Rs.20,000/- granted by the Tribunal towards future treatment since based on the evidence of PW.2 for removal of titanium plate, the same is confirmed. The amount of Rs.15,000/- granted by the Tribunal towards pain and suffering is certainly on lower side when kept in view, the nature of injuries sustained by the petitioner and the sufferance he had undergone and, therefore, the same is enhanced to Rs.25,000/-. The amount of Rs.1,50,000/- granted by the Tribunal towards loss of earnings due to temporary disability is confirmed as already mentioned in the above while discussing in the latter appeal. Thus, in all, the petitioner is entitled to Rs.3,32,000/- as compensation as against the amount of Rs.2,55,000/- granted by the Tribunal.

16. Concerning rate of interest, the Tribunal has granted the same at 9% per annum and the same is not disturbed on the amount awarded by the Tribunal. However, on the enhanced amount of Rs.97,000/-, interest is granted at the rate of 7.5% per annum from the date of petition till realization in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir**

Singh and others^[1].

17. In the result, the latter appeal viz., M.A.C.M.A. No.1410 of 2005 is dismissed, whereas the former appeal viz., C.M.A. No.4714 of 2004 is allowed in part, and the order and decree, dated 13-08-2004, in O.P. No.417 of 2003, passed by the Tribunal, are modified, enhancing the compensation to Rs.3,32,000 (Rupees three lakh and thirty two thousand) from Rs.2,55,000/- against respondents with interest at the rate of 9% per annum on the amount of Rs.2,35,000/- granted by the Tribunal and at the rate of 7.5% per annum on the enhanced amount of Rs.77,000/- (Rupees seventy seven thousand) from the date of petition till realization. There shall be no order as to costs.

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

A. SHANKAR NARAYANA J.

March 21, 2016.

Mgr

^[1]. 2013 ACJ 1403