

HON'BLE SRI JUSTICE A. SHANKAR

NARAYANA

M.A.C.M.A. No.2991 OF 2005

JUDGMENT:

Dissatisfied with the award of Rs.34,000/- as compensation as against the claim of Rs.2,00,000/- laid under Section 166 (1) (a) of the Motor Vehicles Act, 1988 (for short 'the Act') read with Rule 455 of the Andhra Pradesh Motor Vehicles Rules, 1989, by order and decree, dated 21-06-2005, in O.P. No.759 of 2000 on the file of the Chairman, Motor Accidents Claims Tribunal – cum – III Additional District Judge (Fast Track Court), Nizamabad (for short 'the Tribunal'), the instant appeal is preferred by the petitioner under Section 173 of the Act seeking enhancement.

2. The appellant herein is the petitioner in O.P. before the Tribunal, while respondent Nos.1 and 2, who are owner and insurer of lorry truck bearing registration No.AP 15U 6311, respectively, are arrayed as respondent Nos.1 and 2, respectively.

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

4. The facts, in brief, are that on 06-05-2000, the petitioner was proceeding on a lorry truck bearing registration No.AP 15U 6311 from Perkit to Jagtial, as a cleaner, and at about 6.00 a.m., when the lorry truck reached near Venkatrapet village, since its driver drove it at high speed in a rash and negligent manner and unable to control the vehicle, it went aside the road and hit a standing tree, due to which, he sustained fracture to his thigh. Immediately he was shifted to Government Hospital, Metpally, and

from there to Government Headquarters, Nizamabad for treatment. On account of fracture, he suffered disability and, therefore, sought a sum of Rs.2,00,000/- as compensation against respondent Nos.1 and 2, who are owner and insurer of the lorry truck, respectively.

5. Respondent No.1, owner of the lorry truck, remained *ex parte*.

6. Respondent No.2 – Insurance Company filed counter opposing the claim.

7. In the direction of fastening liability or otherwise whether the petitioner is entitled to compensation, the Tribunal framed two issues.

8. During inquiry, the petitioner besides examining himself as PW.1, has examined Dr. Dhoomsingh , who said to have treated him, as PW.2 and marked Exs.A-1 to A-8 and Ex.C-1 in order to substantiate his claim. On behalf of respondent No.2, no witnesses were examined, but copy of insurance policy was marked as Ex.B-1.

9. On issue No.1, the Tribunal, on appraisal of evidence on record, held it in favour of the petitioner. On issue No.2, having found that the petitioner sustained grievous injury and by placing reliance on the evidence of PW.2, the Tribunal granted a sum of Rs.15,000/-; and keeping in view the nature of injuries and the treatment he had undergone, a sum of Rs.5,000/- towards medicines; Rs.3,000/- towards extra nourishment; Rs.3,000/-

towards pain and suffering; Rs.2,000/- towards transport charges; and Rs.6,000/- towards loss of past earnings, making a total sum of Rs.34,000/- as compensation with interest at 9% per annum thereon.

10. It is the aforesaid order which is under challenge in the instant appeal preferred by the petitioner seeking enhancement of compensation contending in the grounds that the Tribunal has not properly appreciated the evidence on record, both, oral and documentary, and also the disability he suffered and granted a meager compensation and, therefore, sought to grant balance amount.

11. Heard Sri A. Radhive Reddy, learned counsel for the appellant – petitioner, and Sri Katta Laxmi Prasad, learned Standing Counsel for respondent No.2 – Insurance Company. Despite service of notice on respondent No.1, none appears.

12. Perused the order and the evidence on record, both, oral and documentary, let in by the parties.

13. The Tribunal has rightly tendered the finding that the disability certificate – Ex.C-1 cannot be used for medico legal purpose, besides certain other reasons assigned by the Tribunal and, therefore, cannot be interfered. Further, as seen from wound certificate – Ex.A-3, there has been only one fracture to the right thigh of the petitioner. Therefore, keeping in view, the same, when the amounts awarded by the Tribunal are seen, certainly, the amount of Rs.15,000/- granted towards injury as such, can be enhanced to Rs.20,000/-. Rs.3,000/- awarded towards pain and suffering can be enhanced to Rs.10,000/- and the amount of

Rs.3,0000/- awarded towards extra nourishment is enhanced to Rs.5,000/-. The amount of Rs.6,000/- granted towards temporary loss of earnings on the ground that for two months the petitioner would not have attended to his regular pursuits besides his avocation, but when the right limb was affected, and to gain normalcy, it would get at least 4 to 6 months and, in that view, of the matter, the same has to be enhanced. Hence, the same is enhanced to Rs.12,000/- from Rs.6,000/- granted by the Tribunal. The other amounts granted by the Tribunal, that being Rs.5,000/- towards medical expenses and Rs.2,000/- towards transport charges are maintained. Thus, in all, the petitioner is entitled to Rs.54,000/- as compensation as against Rs.34,000/- granted by the Tribunal.

14. 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.20,000/-, interest is granted at the rate of 7.5% per annum from the date of petition in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**^[1].

15. In the result, the appeal is allowed in part, and the order and decree, dated 21-06-2005, in O.P. No.759 of 2000, passed by the Tribunal, are modified, enhancing the compensation to Rs.54,000/- (Rupees fifty four thousand) from Rs.34,000/- with interest at the rate of 9% per annum on the amount of Rs.34,000/- granted by the Tribunal and at the rate of 7.5% per annum on the enhanced amount of Rs.20,000/-(Rupees twenty thousand) from

the date of petition till realization. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

February 15, 2016.

Mgr

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