

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2451 OF 2009

JUDGMENT:

Dissatisfied with the award of Rs.15,000/- as compensation for the injuries sustained by the petitioner as against his claim of Rs.1,00,000/- laid under Sections 163-A and 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), by the order and decree, dated 05-03-2008, by the learned Chairman, Motor Accident Claims Tribunal - cum - I Additional District Judge, Adilabad (for short 'the Tribunal'), in O.P. No.586 of 2006, the present appeal is preferred under Section 173 of the Act, seeking enhancement.

2. The appellant herein is the petitioner, while respondent Nos.1 and 2, who are owner and insurer of an auto-rickshaw bearing registration No.AP 09 EP T/R-779 (new AP 01W 2967), respectively, are respondents as such in OP before the Tribunal.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed in OP.

4. The facts in brief are, that on 17-05-2006, the petitioner was proceeding in an auto-rickshaw bearing No.AP 09EP T/R-779 (New No.AP 01W 2967) to go to Muthyampet village, and when it was moving between Loanpalli and Kancharapet villages, since its driver drove it in a rash and negligent manner and when attempted to overtake a stationed lorry, he lost control over the auto-rickshaw and it dashed the parking lorry, due to which, the petitioner sustained

injuries. She claims that she was referred to the hospital and got herself treated in a private hospital. Therefore, she sought the compensation of Rs.1,00,000/- against respondent Nos.1 and 2.

5. Respondent No.1, remained *ex parte*. Respondent No.2, insurer, opposed the claim, requiring the petitioner to prove the valid subsisting driving licence being held by the driver of the auto-rickshaw, and even other requirements.

6. The Tribunal framed three issues. During inquiry, the petitioner, besides examining herself as PW.1, has examined the doctor as PW.2 and marked Exs.A-1 to A-4. On behalf of respondent No.2 – Insurer, no witnesses were examined, but, however, Exs.B-1 and B-2, which are attested copies of insurance policy and charge sheet, were filed.

7. The Tribunal having appreciated Ex.A-3 and evidence of PW.2, found that the petitioner sustained fracture of neck of left humerus and Ex.A-4, X-ray film, confirms the same, and thereby awarded a total sum of Rs.15,000/- towards all heads. The Tribunal also dealt with the contention of the Insurance Company that the driver of the auto-rickshaw was not holding valid subsisting driving licence and having relied on Ex.B-2 contents, arrived at the finding that the driver was not holding driving license, and while observing that respondent No.2 has not placed any material, nor evidence so as

to establish that the owner allowed the person without having driving license drove the auto-rickshaw, given a direction to the Insurance Company to pay initially and recover the same from the owner of the vehicle placing reliance on the decision of the Hon'ble Supreme Court in **National Insurance Co. Ltd. v. Swaran Singh and Others**¹.

8. Heard Sri S. Surender Reddy, learned counsel for the petitioner. Despite completion of service on respondent Nos.1 and 2, who are owner and insurer, none appears.

9. Thus, the scope in the present appeal is confined only to whether or not the appellant is entitled to enhancement of compensation.

10. As could be seen from the evidence of PW.2, the petitioner did really sustain the grievous injury as described in the above. Though, relevant details having been placed by the petitioner and PW.2's evidence proving that the petitioner sustained grievous injuries that being fracture of neck of left humerus on the left shoulder, the Tribunal granted only Rs.15,000/- which is on lower side. Even towards pain and suffering and injury, the petitioner is entitled to more than the said amount. Thus, keeping in view, the sufferance which the petitioner had undergone, the amount of Rs.15,000/- is enhanced to Rs.45,000/- towards all the heads i.e., pain

¹. AIR 2004 SC 1531

and suffering, extra nourishment, transport charges and temporary loss of earnings.

11. Concerning rate of interest, the Tribunal awarded 7.5% per annum. The same is maintained, even on enhanced amount in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**².

12. In the result, the appeal is allowed in part, and the order and decree, dated 05-03-2008, in O.P. No.586 of 2006, passed by the Tribunal are modified enhancing the compensation to Rs.45,000/- (Rupees forty five thousand) from Rs.15,000/- with interest at 7.5% per annum thereon from the date of petition till realization, while maintaining the order and decree in all respects. No order as to costs.

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

A. SHANKAR NARAYANA, J

November 02, 2016.

Mgr

². 2013 ACJ 1403