

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

MACMA.No.21 of 2009

JUDGMENT:

Feeling dissatisfied, with the award of Rs.21,500/- as compensation granted by the Chairman, Motor Accident Claims Tribunal-cum-VIII Additional District Judge, Nizamabad (for short, 'the Tribunal'), by his order, dated 18.06.2008, in O.P.No.757 of 2003, as against the claim of Rs.4,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988, the petitioner preferred the instant appeal claiming to grant the balance amount.

2. The appellant herein is the petitioner, while respondent Nos.1 & 2 herein, who are owner and insurer of the car bearing registration No. AP 27U 1119, respectively, are respondent Nos.1 & 2, respectively, in the original petition.

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

4. The facts in brief are that on 02.06.2003, while the petitioner was travelling in an auto bearing registration No.AP 25 U 780 from Thorlikonda towards Armoor and reached the limits of Brahmanpally, a car bearing registration No.AP 27 U 1119, driven at high speed, came in opposite direction and hit the auto, due to which the auto turned upside down and fell into a ditch by the side of the road. The

inmates of the auto including the petitioner sustained injuries and the petitioner was shifted to Government Headquarters Hospital, Nizamabad, where he was treated as inpatient and underwent surgical operations. The petitioner, claiming that he was treated by a private doctor, spent Rs.2,00,000/- towards medical expenses and was running a readymade shirts shop earning Rs.10,000/- per month thereon, sought a compensation of Rs.4,00,000/- for the injuries he sustained in the said accident from respondent Nos.1 and 2, who are owner and insurer of the accident vehicle, respectively.

5. Respondent No.1 filed counter stating that his car was duly insured with respondent No.2 and the policy was in force as on the date of accident and that the insurer is duty bound to pay the compensation to the petitioner by virtue of the contract and, therefore, sought to dismiss the claim petition against him.

6. Respondent No.2 opposed the claim, but no specific plea is raised touching violation of terms and conditions of the policy.

7. Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident.

8. During enquiry, the petitioner examined himself as P.W.1, besides examining one Dr.Dhoom Singh and Dr.R.Bhupati Reddy as P.Ws.2 and 3, and marked Exs.A1 to A14. On behalf of respondent No.2 – Insurance Company, R.W.1 was examined and Exs.B1 to B4 were marked.

9. On issue No.1, the Tribunal recorded a finding in favour of the petitioner.

10. On issue No.2, the Tribunal found that the petitioner sustained one grievous injury and one simple injury as per the evidence of P.W.2 and awarded Rs.7,000/- towards loss of earnings @ Rs.3,500/- per month for a period of two months. However, the Tribunal did not rely on the evidence of P.W.3 and discarded the hospital and medical bills marked as Exs.A5, A12 and A13. As against the claim of Rs.9,621/- under Ex.A5, the Tribunal awarded Rs.3,000/- towards medical expenses, besides awarding Rs.1,500/- towards extra-nourishment and Rs.10,000/- towards pain and suffering. Thus, a total compensation of Rs.21,500/- was granted by the Tribunal with interest at 7.5% per annum.

11. The aforesaid order is under challenge in the instant appeal seeking to grant the balance amount on the ground that the Tribunal has not properly appreciated the evidence of P.Ws.2 & 3 and the documentary medical evidence on record marked through P.Ws.2 & 3.

12. Heard Sri T.V.Kalyan Singh, learned counsel for the appellant. Despite service of notice on respondent No.2 - Insurance Company, none appears for it. Respondent No.1 has not entered appearance, despite sending notices to him to the address mentioned in the original petition, which were returned as not claimed. In fact, he made appearance before the Tribunal and filed his counter, though, he

did not actually participate later. Therefore, it has to be viewed that the service on respondent No.1 was proper.

13. From the evidence of P.W.2, the Tribunal observed that the petitioner sustained one grievous injury and one simple injury, but, as could be seen from Ex.A2, a copy of the wound certificate, the petitioner has sustained four injuries (1) fracture of right femur (2) fracture of right knee (3) fracture of right shoulder and (4) abrasion on right knee, and that injuries 1 to 3 are grievous in nature, whereas the last injury is simple in nature, as certified by Dr. S.S.Yadav, the Deputy Assistant Surgeon, but, somehow, he was not examined. On the other hand, two other doctors i.e., Dr. Dhoom Singh and Dr. R.Bhupati Reddy were examined as P.Ws.2 and 3 on the ground that the petitioner got treated himself under the said doctors. P.W.2, the doctor who entered at a later stage, was working as Orthopaedic Civil Surgeon in the District Headquarters Hospital, Nizamabad. Be that as it may, when the three grievous injuries sustained by the petitioner as described above are considered, the petitioner is certainly entitled to Rs.75,000/- towards grievous injuries including pain and suffering @ Rs.25,000/- for each grievous injury.

14. The amount of Rs.9,621/-, claimed by the petitioner towards medical expenses, is also granted, in view of the evidence of P.Ws.1 and 2 and the fact that the petitioner, not only undergone surgical intervention, but also got treated for non-union of fractures of shaft

femur on right side, five years after the incident. Besides the same, the petitioner is also entitled to a sum of Rs.15,000/- towards extra-nourishment, Rs.5,000/- towards attendant charges and Rs.3,000/- towards transport charges. Considering that the petitioner was a tailor, but not running any shop, the Tribunal awarded an amount of Rs.7,000/- towards loss of earnings @ Rs.3,500/- per month for a period of two months. However, since the petitioner sustained injury to his lower limb, which would have immobilised him for certain time, the amount of Rs.7,000/- granted by the Tribunal towards loss of earnings is enhanced to Rs.21,000/- @ Rs.3,500/- per month for a period of six months.

15. The Tribunal, while granting compensation of Rs.21,500/-, though, fastened liability on the Insurance Company, having found that there was contravention of the terms and conditions of the policy, as the driver of the auto was not holding valid driving licence to drive the auto, which is a passenger's vehicle, but holding L.M.V. licence, directed the Insurance Company to recover the amount from owner of the offending vehicle by instituting execution proceedings. The said finding recorded by the Tribunal does not warrant interference of this Court, since there is no challenge in the instant appeal by the petitioner touching that finding.

16. Thus, the petitioner is entitled to a total compensation of Rs.1,28,621/- (Rupees One lakh twenty eight thousand six hundred and twenty one), as against Rs.21,500/- granted by the Tribunal, and the same is, accordingly, granted. Since the rate of interest awarded by the

Tribunal at 7.5% per annum is in accordance with the rate of interest awarded by the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**¹, the same rate of interest is maintained on the entire amount awarded, from the date of petition till realisation.

17. Accordingly, the appeal is allowed in part modifying the order passed by the Tribunal, by enhancing the compensation, as indicated above, and confirming the same in all other respects, including the rate of interest. There shall be no order as to costs.

18. As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, shall stand closed.

19.08.2016
v v



JUSTICE A.SHANKAR NARAYANA

¹ 2013 ACJ 1403