

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2418 OF 2009

JUDGMENT:

The present Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988, is preferred by the petitioner seeking enhancement of compensation on the ground that the amount of Rs.1,12,819/- awarded through the order and decree dated 02.07.2008 in O.P. No.563 of 2006 by the learned Chairman, Motor Accidents Claims Tribunal - cum - XXII Additional Chief Judge, City Criminal Court, Hyderabad, was on lower side and not in tune with the sufferance the petitioner has undergone in the accident and the injuries he sustained and, more particularly, the claim being Rs.2,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

2. The facts would show that on 26.02.2006 at about 1.00 p.m., while the petitioner was travelling in an auto-rickshaw bearing No.AP-24-V-0782 from D. Repaka to Mothkur, near Patimatla crossroads, lorry bearing No.AP-16-X-1324, driven at high speed in a rash and negligent manner, came and dashed the auto-rickshaw, due to which he sustained injuries. He claims that he spent Rs.60,000/-, earning Rs.5,000/-, aged 40 years and on account of injuries, he sustained partial permanent disability, and, therefore, sought to grant compensation of Rs.2,00,000/- with interest at 18% per annum.

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

4. Respondent No.2, insurer of the lorry, opposed the claim requiring the petitioner to prove what all he had averred, besides contending that the claim petition is bad for non-joinder of the owner and insurer of the auto-rickshaw in which he was travelling.

5. The Tribunal, based on the above pleading, framed three (3) issues and examined PWs.1 and 2 and marked Exs.A-1 to A-11 on behalf of the petitioner, and, on behalf of the insurer, examined RW.1 and marked Exs.B-1 to B-3.

6. The Tribunal, having found both the issues in favour of the petitioner, based on the evidence of PW.2, the medical officer, and the documentary evidence under Exs.A-5 to A-11, granted Rs.30,000/- towards pain and suffering, Rs.39,819/- towards medical expenses, Rs.2,000/- towards temporary loss of income, Rs.1,000/- towards extra-nourishment and other charges and Rs.40,000/- towards future operation and thus, granted a total sum of Rs.1,12,819/- with interest at 6% per annum.

7. The ground agitated by the insurer is that the auto was overloaded with more than ten (10) passengers and, though, RW.1 was examined by the Tribunal, did not find favour with the insurer.

8. Heard Sri B. Parameswara Rao, learned counsel for the petitioner (appellant).

9. Despite making appearance, there is no representation for the insurer (respondent No.2).

10. Since it is endorsed in the cause title of the grounds of appeal that respondent No.1, owner of the lorry that involved in the accident, is not a necessary party, no process was resorted to against him.

11. The learned counsel for the petitioner would state that no notices were received by the petitioner indicating that any appeal has been preferred by the insurer challenging the findings recorded by the Tribunal.

12. Turning to the compensation awarded by the Tribunal, an amount of Rs.30,000/- granted towards pain and suffering for fracture of both bones of left leg and a laceration on the left ear appears to be on lower side and, therefore, the same is enhanced to Rs.40,000/-, more particularly, when the petitioner was treated in NIMS. The amount of Rs.39,819.- granted towards medical expenses since proved through PW.2 the same is confirmed, though, the petitioner claims Rs.60,000/- said to have been spent by him, and also the amount of Rs.40,000/- granted towards future operation. The amount of Rs.2,000/- granted towards loss of temporary earnings is enhanced to Rs.5,000/- keeping in view that the petitioner sustained fracture of

both bones of his left leg. The amount of Rs.1,000/- granted towards extra-nourishment is enhanced to Rs.5,000/-.

13. Thus, the petitioner is entitled to a total compensation of Rs.1,29,819/- (Rupees one lakh twenty nine thousand eight hundred and nineteen only) as against Rs.1,12,819/- granted by the Tribunal and the same is accordingly granted. However, the petitioner is entitled to the rate of interest at 7.5% per annum on the entire compensation, which includes enhanced compensation, as against 6% granted by the Tribunal from the date of petition till realisation, in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**¹.

14. 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

December 27, 2016.

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¹ 2013ACJ1403 = 2013(4)ALT35