

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

MACMA No. 1470 of 2005

Judgment:

Feeling dissatisfied with the award of Rs.16,500/- as compensation, by the order, dated 07.07.2001, in MVOP No. 555 of 1999 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Kurnool, as against the claim of Rs.80,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') the instant appeal is preferred seeking enhancement.

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the Original Petition before the Tribunal.

3. The facts, in brief, are that, on 12.02.1998, at about 3.45 PM, the petitioner along with five others was proceeding in a Jeep bearing registration No.AP-02C-6799 to Anantapur to attend a meeting of Minority Cell and, due to rash and negligent driving of the Jeep driver, while negotiating a curve, he lost control over the vehicle, due to which, it turned upside down near Peddavadugur cross roads away from Gooty, in which process, the petitioner sustained injuries to his left thigh and other simple injuries. He was immediately shifted to APVVP Community Hospital, Gooty. After first aid he was sent to Government General Hospital, Kurnool. According to the petitioner, on the next day, he himself got discharged from the hospital and he suffered disability due to accidental injuries.

4. Before the Tribunal, the first respondent – owner of the Jeep remained *ex parte*. The second respondent – insurer opposed the claim and, though, a specific plea was taken that the petitioner was an unauthorized passenger, it appears the said plea was, somehow, not substantiated by examining any of the witnesses and by filing relevant

document to show that the vehicle was a goods carrier.

5. The Tribunal, based on the said pleadings, framed two issues in order to fix the responsibility for the accident.

6. During enquiry, the petitioner examined himself as PW.1 besides examining Dr. Javad Hussaini as PW.2 and marked Exs.A1 to A6. On behalf of the second respondent – Insurance Company no witnesses were examined, but the copy of insurance policy was marked as Ex.B1.

7. On issue No.1, the Tribunal held that due to rash and negligent driving of the driver of the Jeep the accident had occurred resulting injuries to the petitioner. On issue No.2, while discussing various aspects covered by each head, under which claims were made, the Tribunal has granted Rs.1,000/- towards loss of earnings, Rs.5,000/- towards pain and suffering, Rs.10,000/- towards medical expenses and Rs.500/- towards transportation charges. Thus, the Tribunal has granted a total sum of Rs.16,500/- with interest at 9% p.a., from the date of petition till realization.

8. Aggrieved by the same, the instant appeal is preferred contending in the grounds that the Tribunal has not properly appreciated the evidence of PW.2 and granted meagre amounts under various heads. It is also stated that the Tribunal went wrong in discarding the medical bills merely on the ground that some of the bills show the name as Vali Basha treating it as the name of a different person from that of the petitioner, though, in fact, the bills relate to the petitioner, therefore, sought to grant the balance amount.

9. Heard Sri Shafaath Ahmed Khan, learned counsel for the appellant, and Sri R. Venkat Rao, learned counsel for the second respondent – Insurance Company. It is mentioned in the cause title of the grounds that the first respondent is not a necessary party, since he

was set *ex parte* before the Tribunal. Hence, the absence of the first respondent would not make any difference in view of the decision of a Division Bench of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma**^[1].

10. Perused the order under challenge and the evidence on record both, oral and documentary, let in by the petitioner. It is not in dispute that the petitioner sustained injury to his left thigh and even skin grafting was done by PW.2, working as Medical Officer in RR Hospitals. The Tribunal, somehow, disbelieved the medical bills marked as Ex.A6 on the mere ground that they do not relate to the petitioner, as petitioner's name is not tallying with the name mentioned in the medical bills. Be that as it may, PW.2's evidence would clearly show that RR Hospital authorities have issued a bill for Rs.14,500/-, therefore, the said amount is granted. In fact, as regards Rs.9,000/-, according to PW.2, he states that on the letter head of Apollo Medical Centre, Kurnool, he has issued the bill. Since his evidence proves the same, even, the amount of Rs.9,000/- is granted, thus, making a total sum of Rs.23,500/- towards medical expenses as against Rs.10,000/- granted by the Tribunal.

11. Now coming to the injury, the Tribunal has granted a sum of Rs.5,000/- towards pain and suffering. Since the factum of petitioner undergoing skin grafting to his left thigh is not in dispute and even proved through PW.2's evidence, the same is enhanced to Rs.20,000/- towards injury as well as pain and suffering together. The amount of Rs.500/- granted by the Tribunal towards transportation charges is enhanced to Rs.2,000/-. The amount of Rs.2,000/- granted by the Tribunal towards attendant charges is maintained. Towards loss of earnings, the Tribunal has granted a sum of Rs.1,000/- as against the claim of Rs.24,000/-, but the details are not forthcoming as to the occupation of the petitioner and the definite income he was deriving

and that the injury did really cause such inconvenience so as to disable him from attending his avocation. However, keeping in view, he must have suffered for at least one month, the amount of Rs.1,000/- is enhanced to Rs.2,000/-. Thus, the petitioner is totally entitled to Rs.49,500/- (Rs.14,500/- + Rs.9000/- + Rs.20,000/- + Rs.2000/- + Rs.2000/- + Rs.2000/-) as against Rs.16,500/- granted by the Tribunal.

The interest at 9% p.a., granted by the Tribunal, is maintained on the amount of Rs.16,500/- granted by it, but the interest on the enhanced amount is granted at 7.5% p.a., from the date of petition till realization as per the decision of the Hon'ble Apex Court in **Rajesh and others v.**

Rajbir Singh and others^[2].

12. Accordingly, the MACMA is partly allowed. There shall be no order as to costs.

13. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal shall stand closed.

A. SHANKAR NARAYANA, J

Date: 20.01.2016

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^[1] 2001(1) ALD 453 (DB)

^[2] 2013 ACJ 1403 = 2013(4) ALT 35