

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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M.A.C.M.A.No. 1176 of 2009

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DATE: 28.07.2016

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Between:

Chadalavada Srikanth

.. Appellant/
Claim petitioner

And

Kalahasetty Uday Bharat Kumar
and another

.. Respondents

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JUDGMENT:-

The present appeal is preferred by the petitioner, who sustained injuries in a road accident, dissatisfied with the award of Rs.46,500/- towards compensation as against the claim of Rs.1,50,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short “the Act”), by the order and decree dated 02.02.2007 in M.V.O.P.No. 89 of 2005 on the file of the Chairman, Motor Vehicles Accidents Claims Tribunal-cum-I Additional District Judge, Guntur (for short “the Tribunal”) seeking enhancement.

2. The facts in brief are that on 23.11.2004, the petitioner, while proceeding to Guntur from Nidumukkala on his Hero Honda Motor cycle and reached Venkateswaraswamy Temple, Gorantla at about 01:00 P.M., a lorry bearing No.AP7T 9126 driven by its driver in a rash and negligent manner, came and hit the motorcycle, due to which, he fell down and sustained grievous and simple injuries. The concerned police registered a crime against the driver of the lorry. The petitioner, having spent huge amount for his treatment, claiming that he sustained partial permanent disability,

claimed Rs.1,50,000/- against the 1st and 2nd respondents, who are the owner and the insurer respectively.

3. The 1st respondent remained *ex parte*.

4. The 2nd respondent filed written statement opposing the claim raising various pleas.

5. On the basis of the said pleadings, the Tribunal has framed three issues.

6. During inquiry before the Tribunal, on behalf of the petitioner, he examined himself as PW1, besides examining one Dr.Y.Lakshmanaswamy as PW2 and marked Exs.A1 to A4 and Exs.X1 and X2. On behalf of the respondents, no witnesses were examined and no documents were marked.

7. The Tribunal, on assessing the evidence of PWs.1 and 2 and also basing on Exs.A1 to A4 and Exs.X1 and X2, recorded a finding in favour of the petitioner on issue No.1.

8. On issue No.2, the Tribunal, somehow, expressing that the petitioner was entitled to compensation, awarded the amounts mentioned against different heads. The Tribunal awarded Rs.6,000/- towards medical expenses though the bills under Ex.A4 were filed showing that he incurred an expenditure of Rs.21,304/- on the mere ground that the injured in an accident case are not supposed to take treatment in Corporate Hospitals of their own choice which finding appears to be in deviation

of appreciation of evidence in accordance with the evidentiary rule. Therefore, the amount of Rs.21,304/- is granted towards medicines and treatment as against Rs.6,000/- granted by the Tribunal.

9. The Tribunal has granted Rs.25,000/- towards pain and suffering for fracture sustained by the petitioner, which in fact, accounted for shortening of right leg by half an inch. PW2, in fact, stated in his evidence that the petitioner suffered 20% disability. The Tribunal has not taken the disability into consideration on the ground that though the Medical Board is located at Head Quarters, the petitioner has not approached it. Even otherwise, PW2, in his

cross-examination, while expressing the disability assessed by him, stated that the fracture sustained by the petitioner is completely united and the petitioner can walk without any difficulty. However, since there has been half inch shortening of right leg which certainly affects the hip joint movements, the petitioner is entitled to more than what is granted by the Tribunal as well as for pain and suffering. Therefore, a sum of Rs.50,000/- is granted for pain and suffering as against Rs.25,000/- granted by the Tribunal.

10. The Tribunal has granted Rs.1,000/- towards extra nourishment, but keeping in view, the injury sustained by the petitioner, Rs.5,000/- is granted towards

extra nourishment as against Rs.1,000/-. Towards transportation and attendant charges, Rs.5,000/- is granted as against incidental expenses of Rs.1,500/- granted by the Tribunal. The Tribunal assessed loss of earnings at Rs.6,000/- taking the income of the petitioner at Rs.1,500/- per month for four months. However, treating that the petitioner was earning a sum of Rs.2,500/- per month as no salary certificate is filed though identity card is available, for four months, Rs.10,000/- is granted as against Rs.6,000/-. The amount of Rs.7,000/- granted by the Tribunal towards loss of amenities is maintained. Thus, in all, the petitioner is entitled to Rs.98,304/- towards compensation as against the amount of Rs.46,500/-.

11. The rate of interest at 7.5% per annum awarded by the Tribunal is maintained in view of the decision of the Hon'ble Supreme Court in **Rajesh and Others v. Rajbir Singh and Others**^[1].

12. In the result, the appeal is allowed in part, and the order and decree, dated 02.02.2007, in M.V.O.P.No. 89 of 2005, passed by the Tribunal are modified enhancing the compensation to Rs.98,304/- (Rupees Ninety Eight Thousand Three Hundred and Four Only) from Rs.46,500/- with interest at 7.5% per annum on the enhanced amount from the date of the petition till

realization. There shall be no order as to costs.

As a sequel to the allowing of the Appeal in part, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

A. SHANKAR
NARAYANA,J

28.07.2016

bcj

[\[1\]](#) 2013 ACJ 1403