

HON'BLE SRI JUSTICE A. SHANKAR

NARAYANA

M.A.C.M.A. No.1458 OF 2005

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JUDGMENT:

The instant appeal is preferred by the petitioner seeking enhancement of compensation having dissatisfied with the award of Rs.40,000/-, by order and decree, dated 26-09-2003, in O.P. No.773 of 2000, on the file of the Chairman, Motor Accident Claims Tribunal - cum - I Additional District Judge, Nalgonda (for short 'the Tribunal'), as against the claim of Rs.2,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

2. The appellant herein is the petitioner in O.P. before the Tribunal, while respondent Nos.1 and 2, who are owner and insurer of Jeep bearing registration No.AP 20T 8716, respectively, are Respondent Nos.1 and 2, respectively.

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

4. The facts, in brief, are that on 31-05-2000, the petitioner started driving the jeep bearing registration No.AP 20T 8716 from Bhongir in order to go to

Chikatimamidi, in the course of his employment under respondent No.1 which was insured with respondent No.2, and when he reached Vadapathy village at about 10.30 a.m., the jeep met with tractor and trailer bearing registration No.AP 24U 5345 and 5347, respectively. As a result, front portion of the jeep was completely damaged and he sustained grievous injuries. He was immediately shifted to Government Hospital, Bhongir, and from there, he was shifted to Gandhi Hospital, Secunderabad, where he had undergone treatment as in-patient having undergone surgical intervention to his right leg and he became disabled and, therefore, sought Rs.2,00,000/- as compensation against respondent Nos.1 and 2, who are owner and insurer of the jeep.

5. Respondent No.1, owner of the jeep, remained *ex parte* before the Tribunal.

6. Respondent No.2 - Insurance Company opposed the claim required the petitioner to prove the material allegations levelled. However, claiming that the compensation sought for was excessive, requested to dismiss the claim petition.

7. Based on the pleadings, the Tribunal framed the following three issues

“ 1) Whether the petitioner sustained any injuries in a motor

accident, due to rash and negligent driving on the part of the driver of the jeep bearing No.AP20T-8716 ?

2) Whether the petitioner is entitled to any compensation, If so, to what amount and by whom it should be paid?

3) To what relief? ”

8. During inquiry before the Tribunal, in order to substantiate his case, the petitioner besides examining himself as PW.1, has examined one Dr. Y. Surender Rao, Orthopaedic Surgeon from Gandhi Hospital, Secunderabad, as PW.2, and marked Exs.A-1 and A-2, which are true copies of first information report and discharge card issued from Gandhi Hospital, respectively. On behalf of respondent No.2, no witness was examined, but, however, true copies of charge sheet and insurance policy were filed and marked as Exs.B-1 and B-2, respectively.

9. The Tribunal, on appreciation of evidence, has recorded a finding on issue No.1 holding that the accident had occurred due to rash and negligent driving of the driver of the jeep. On issue No.2, basing on the evidence of PW.2 - Dr. Y. Surender Rao, Orthopaedic Surgeon, who has spoken that the petitioner was admitted in Gandhi Hospital on 31-05-2000 with fracture of shaft femur right side and

Hemorrhage in the right thigh upper and middle third junction; he was operated on 09-06-2000; the fracture was fixed with a nail, which was still in the body on the date of his deposition, and that the petitioner was discharged on 22-06-2000 and he assessed the disability at 20%; the Tribunal has granted Rs.40,000/- towards fracture, medical expenses, pain and suffering with interest at 9% per annum thereon.

10. Having got dissatisfied with the said amount, the instant appeal is preferred by the petitioner contending in the grounds that the Tribunal has not granted any amounts under the heads of transport to hospital, extra nourishment and medical expenses, and though, the petitioner took treatment for 20 days in Gandhi Hospital, suffering with continuing permanent disability, loss of future earning capacity and conjugal happiness, still, the Tribunal without properly appreciating the evidence of the doctor (PW.2), granted a meager compensation and, therefore, sought to grant balance amount.

11. Heard Sri T. Viswarupa Chary, learned counsel for the appellant - petitioner on 21-09-2015 and, thereafter, when the matter stood adjourned from time to time, there was no representation for respondent No.2 - Insurance Company, and even on 23-03-2016, though, the matter was directed to be listed under the caption 'for

orders’.

12. Perused the order and the evidence on record, both, oral and documentary, let in by the parties.

13. There is no need to refer to the evidence of PW.1. But, however, the evidence of PW.2 is material to decide whether the amount of Rs.40,000/- granted by the Tribunal is just and reasonable compensation or not, or whether the petitioner is entitled to enhancement?

14. Ex.A-2 is the discharge card. It shows that the petitioner was admitted in Gandhi Hospital, Secunderabad on 31-05-2000, and operation was done on 09-06-2000, and was discharged on 22-06-2000. The clinical and therapeutic summary shows that closed fracture of shaft femur right upper and middle 1/3rd nailing was done. PW.2, no doubt, asserts, in his chief-examination, that on account of fracture and presence of nail in the body of PW.1, he was having disability to do hard work and may not perform his duties as hitherto he was performing i.e., prior to the occurrence of the accident, and after examining PW.1, he arrives at 20% towards partial permanent disability and stated that PW.1 has developed mild limping on account of the said fracture and shortening of right leg by 1 cm.

15. No doubt, PW.2 was cross-examined by the learned standing counsel for Insurance Company, but he has denied the suggestion that PW.1 has become totally normal and can do hard work as usual. In fact, no certificate was issued by PW.2, and even his evidence, in the chief examination, is to the effect that PW.1 may not perform his duties as he used to perform previous to accident and further his evidence shows that the disability was due to the presence of nail still within the body. Since shortening of limb was 1 cm. of right leg of PW.1, which is almost negligible can be ignored. Further, nothing prevented PW.2 to issue a certificate mentioning the restriction of limb, if any, in terms of degrees of particular portion of the right leg of PW.1 in arriving at 20% disability. That appears to be the reason why, the Tribunal has granted Rs.40,000/- without resorting to structural formula.

16. It is no doubt true, that PW.1 was a driver, but, unless there is something convincing in the form of legally acceptable evidence, besides evidence of PW.2, more particularly, by issue of disability certificate with relevant details as to how 20% disability for the said limping was arrived at, it is difficult to accept the evidence of PW.2 in holding that the disability of 20% as spoken to by him can be taken for determination of compensation. However, for

the purpose of assessing whether the compensation determined by the Tribunal is just and reasonable, evidence of PW.2 is relevant. In the said context, when examined the injury sustained by the petitioner, certainly, the amount of Rs.40,000/- granted by the Tribunal is on lower side. Therefore, the said amount is construed as the amount awarded towards injury. Towards pain and suffering, a sum of Rs.5,000/- is granted.

17. This apart, the petitioner is entitled to extra nourishment and, therefore, a sum of Rs.15,000/- is granted towards the same. Towards transport charges, a sum of Rs.3,000/- is granted. Towards attendant charges, certainly, the petitioner must have required attendant's service and, therefore, for three months @ Rs.1500/- per month, a sum of Rs.4,500/- is granted. This apart, the petitioner must have sustained loss of temporary earnings, at least, for a period of six months, in which case, at Rs.2,000/- per month, a sum of Rs.12,000/- is granted. Though, no document is filed by the petitioner incurring expenditure towards medical expenses, but, however, the petitioner is entitled to Rs.5,000/- keeping in view, that he had undergone a surgery to his right leg.

18. The learned counsel for the petitioner placed reliance on the decision of the Hon'ble Supreme Court in

Jakir Hussein v. Sabir and others^[1]. The accident therein had taken place on 12-11-2008 at 6.30 p.m., while appellant therein was driving a Tempo, and the claim was laid in the year 2009 under Section 166 of the Act. The appellant therein suffered compound fractures to his right arm, which prevented him from performing his regular work as driver therein. Though, the disability was assessed at 30% by the Tribunal and 55% by the High Court, however, the Hon'ble Supreme Court treating it as 100% and his income at Rs.4,500/- per month, since as per the Government of Madhya Pradesh notification under Section 3 of Minimum Wages Act, 1948, a person employed as a driver earns Rs.128/- per day, but treated it as Rs.150/- per day by the Hon'ble Supreme Court. In the instant case, for two reasons, the fact-situation can be distinguished. The accident in the instant case took place in the month of May, 2000, the learned counsel for the petitioner has not placed any material to show as to what was the daily wage of a driver under private employment. This apart, the medical evidence is not that clinching enough to show that the petitioner sustained 20% disability by issue of any medical certificate and even shortening of 1 cm. of right leg though, spoken to by PW.2, but it is not based on any scientific evidence by

obtaining relevant X-ray report before PW.1 tendering the evidence. That has been the reason, the compensation can only be determined based on the injuries sustained by the petitioner and its impact on pursuing his activities as a driver. For removal of rods including medical expenses, a sum of Rs.15,000/- is granted.

19. Thus, in all, the petitioner is entitled to Rs.99,500/- rounding it off to Rs.1,00,000/- as compensation as against the amount of Rs.40,000/- granted by the Tribunal.

20. Concerning rate of interest, the Tribunal granted it at 9% per annum, the same is not disturbed. But, on the enhanced amount of Rs.60,000/-, rate of interest at 7.5% per annum is granted in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**^[2].

21. In the result, the appeal is allowed in part, and the order and decree, dated 26-09-2003, in O.P. No.773 of 2000, passed by the Tribunal, are modified, enhancing the compensation to Rs.1,00,000/- (Rupees one lakh) from Rs.40,000/- with interest at the rate of 9% per annum on the amount of Rs.40,000/- granted by the Tribunal and at the rate of 7.5% per annum on the enhanced amount of Rs.60,000/-(Rupees sixty thousand) from the date of

petition till realization. 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.

March 28, 2016.
Mgr

[\[1\]](#) . (2015) 7 SCC 252

[\[2\]](#) . 2013 ACJ 1403