

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2966 of 2005

JUDGMENT :

The instant Civil Miscellaneous Appeal is preferred by the petitioner, who was a minor as on the date of filing the claim petition, through his father and next friend, seeking enhancement of compensation for the injuries sustained by him in the accident that occurred on 20.04.2000, assailing the judgment and decree dated 23.06.2005 in O.P.No.559 of 2000 passed by the Chairman, I Additional Motor Accidents Claims Tribunal, Nizamabad District (for brevity "the Tribunal"), whereby and whereunder a sum of Rs.35,500/- was awarded towards compensation with interest @ 9% per annum, as against the claim of Rs.2,00,000/- made under Section 166 of the Motor Vehicles Act, 1988 (for brevity "the Act").

2. The appellant is the petitioner and respondent Nos.1 and 2 are owner and insurer, respectively, of the offending vehicle. For the sake of convenience, in this appeal, the parties are referred to as they are arrayed in O.P.No.559 of 2000 before the Tribunal.

3. The facts, in brief, would show that on 20.04.2000 at about 8-00 p.m., while the petitioner was going on foot from Railway Gate Navipet towards Navipet village along with his father and when they reached Navipet Bus Stand, a Suzuki Motor Cycle bearing No.AP 22D 4285 driven by its driver in a rash and negligent manner came from opposite direction and dashed the petitioner, due to which the petitioner fell down and the front wheel of the motor cycle run over him and he sustained fracture of left

leg, left foot and injuries on other parts of the body. Immediately, he was admitted in Government Hospital, Nizamabad, where his leg was operated twice by incurring a sum of Rs.60,000/- towards medical expenses. By the date of accident, the petitioner was 6 years old and working as labour and earning Rs.900/- per month. Due to the injuries, the petitioner was unable to work and walk and became permanently disabled and hence sought a sum of Rs.2,00,000/- towards compensation for the injuries sustained by him in the accident.

4. Before the Tribunal, the 1st respondent, who is the owner of the motor cycle, remained *exparte* and 2nd respondent, who is the insurer of the motor cycle, filed counter opposing the claim by raising various grounds, but no specific plea has been raised as regards violation of the terms and conditions of the insurance policy.

5. Basing on the said pleadings, the following issues were framed for trial as to the responsibility of the accident.

- “(1) Whether the accident occurred on 20.04.2000 due to rash and negligent driving of the Suzuki Motor Cycle bearing No.AP 22D 4285 driven by its driver?
- (2) Whether the petitioner is entitled to compensation? If so, to what amount and from whom?
- (3) To what relief?”

6. During enquiry, the petitioner's next friend and father was examined as P.W.1, besides examining one Dr. L. Ramuloo as P.W.2, and marked Exs.A.1 to A.5. On behalf of respondent No.2-insurer, none were examined and no documents were marked.

7. On appreciation of the evidence on record, the Tribunal

answered issue No.1 in favour of the petitioner holding that due to the rash and negligent driving by the driver of the offending vehicle, the accident had occurred resulting in injuries to the petitioner.

8. On issue No.2, the Tribunal, while referring to the judgments rendered by the Division Benches of Allahabad, Madhya Pradesh and Kerala High Courts, taken the income of the petitioner as Rs.15,000/- per annum. The Tribunal, while declining to accept Ex.A.5 – Disability Certificate and the evidence of P.W.2 – Dr. L. Ramuloo, by assigning reasons therein, however, basing on the description of injuries mentioned in Ex.A.3 – Injury Certificate, granted a sum of Rs.20,000/- for both bone injuries to left leg @ Rs.10,000/- each; a sum of Rs.5,000/- towards injury Nos.2 and 3 @ Rs.2,500/- per simple injury; Rs.5,000/- towards pain and suffering, Rs.5,000/- towards medical expenses, Rs.500/- towards transport expenses, thus a total sum of Rs.35,500/- was awarded towards compensation to the petitioner with interest @ 9% per annum from the date of the petition till realization, against respondent No.2 only.

9. It is the aforesaid order, which is under challenge in this appeal seeking enhancement of compensation, contending in the grounds of appeal that the Tribunal ought not to have overlooked 50% permanent/partial disability mentioned in Ex.A.5 – Disability Certificate issued by P.W.2 – Dr. L. Ramuloo and also his evidence in proof of contents therein and, therefore, sought to grant the balance amount.

10. Heard Sri P. Radhiv Reddy, learned counsel for the

appellant/petitioner, and Sri Ramachandra Reddy, learned Standing Counsel for respondent No.2 – insurer. The appeal was dismissed for default against respondent No.1 – owner of the offending vehicle by order dated 06.01.2012. The dismissal of appeal against respondent No.1 – owner of the vehicle is of no consequence in view of the decision of a Division Bench of this Court in MEKA CHAKRA RAO V. YELUBANDI BABU RAO @ REDDEMMA AND OTHERS^[1],

11. This Court had an occasion to refer to the Certificate issued by Dr. L. Ramuloo, who was examined as P.W.2 in this case, while such cases came up before this Court, and even made an observation that he was in the habit of exaggerating the disability and issuing Disability Certificates without proper examination of the injuries sustained by the injured and also using the proforma of the Government Hospital and signing the same as a Civil Assistant Surgeon the said Hospital. In that view of the matter, certainly, the evidence of P.W.2 is to be excluded from consideration. The Tribunal also has rightly did so.

12. Now, despite excluding the evidence of P.W.2, it is to be seen whether the petitioner is entitled for enhancement of compensation in the instant appeal.

13. As seen from the photograph and the injuries sustained by the petitioner from the original record contained in Ex.A.5 – Disability Certificate issued by P.W.2 – Dr. L. Ramuloo, his left leg on ankle point was divested resulting in permanent disability and the petitioner, being a school going boy of 6 years old by the date of accident, has to suffer with the said disability through out

his life. Therefore, certainly, the amount granted by the Tribunal is very meager and on lower side. Though, Ex.A.5 – Disability Certificate is excluded, in view of appreciation of evidence based for awarding compensation, the amount of Rs.10,000/- awarded by the Tribunal towards each grievous injury requires enhancement and accordingly, the same is enhanced to Rs.30,000/- each. Further, for the simple injuries, the Tribunal granted a sum of Rs.2,500/- each, the same is enhanced to Rs.3,000/- each, thus making it to Rs.6,000/- for both the injuries. The Tribunal granted a sum of Rs.5,000/- towards pain and suffering. As could be seen the pain and suffering the petitioner has undergone on account of injuries to his left leg, certainly, the same requires enhancement and, therefore, the same is enhanced to Rs.20,000/-. As regards the amount of Rs.5,000/- granted by the Tribunal towards medical expenses, the same is maintained. The amount of Rs.500/- granted towards transport expenses is enhanced to Rs.2,000/-. Further, no amount was awarded by the Tribunal towards extra-nourishment, therefore, a sum of Rs.10,000/- is granted under that head.

14. Thus, the petitioner is entitled to a total compensation of Rs.1,03,000/- (Rs.60,000/- + 6,000/- + 20,000/- + 5,000/- + 2,000/- + 10,000/-) as against the compensation of Rs.35,500/- awarded by the Tribunal with interest at 7.5% per annum on the enhanced amount as per the decision in RAJESH AND OTHERS V. RAJBIR SINGH AND OTHERS^[2], while maintaining interest @ 9% per annum granted by the Tribunal on the amount awarded by it, from the date of the petition till the date of realization.

15. Accordingly, this Civil Miscellaneous Appeal is allowed in part, enhancing the amount of compensation from Rs.35,500/- to Rs.1,03,000/- (Rupees one lakh three thousand only) with interest at 7.5% per annum on the enhanced amount of Rs.67,500/- (Rupees sixty seven thousand five hundred only), while maintaining interest @ 9% per annum granted by the Tribunal on the amount awarded by it, from the date of the petition till the date of realization. The apportionment of the liability ordered by the Tribunal shall remain unaltered. There shall be no order as to costs.

16. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE A. SHANKAR NARAYANA

22.03.2016.
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CIVIL MISCELLANEOUS APPEAL No.2966 of 2005

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[\[1\]](#) 2001(1) ALT 495 (D.B.)
[\[2\]](#) 2013 ACJ 1403