

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1585 OF 2009

JUDGMENT:

Having got dissatisfied with the award of Rs.53,000/- as compensation by the order dated 15.06.2006 in M.V.O.P. No.126 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-VII Additional District Judge, Madanapalle (for short, 'the Tribunal') as against the claim of Rs.1,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') read with the Rules framed thereunder, for the injuries sustained by the appellant-petitioner in a road accident, the instant appeal is preferred under Section 173 of the Act seeking enhancement of compensation.

2. The appellant herein is the petitioner, while respondent Nos.1 and 2 herein, who are the owner and insurer of the lorry bearing registration No.AP 02U 4519, are respondent Nos.1 and 2, respectively, in the original petition.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts would show that the petitioner, who was a minor aged 10 years on the date of accident, on 17.05.2002 at about 8-15 a.m., was standing near old telephone exchange located on Kadiri-Madanapalle road and was about to cross the road, during which time, the driver of the lorry bearing registration No.AP 02U

4519 since drove it in a rash and negligent manner dashed the petitioner, due to which, she sustained crush injury to her right hand and her entire muscles peeled out and she also sustained injuries to other parts of her person. She claims that she was treated as inpatient for more than one month in Government Hospital, Madanapalle and spent Rs.50,000/- towards medical treatment, Rs.20,000/- towards extra nourishment and Rs.10,000/- towards attendant, lodging and transport charges, etc. Hence, she sought Rs.1,00,000/- from respondent Nos.1 and 2, who are owner and insurer of the accident vehicle.

5. Both the respondents filed separate counters opposing the claim, while stating that the amount claimed is excessive, sought to dismiss the claim petition against them. No specific plea was put forth by the Insurance Company touching the violation of any of the terms and conditions of the policy.

6. Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident.

7. During enquiry, the next friend of the petitioner examined himself as P.W.1 besides examining one G.Subbamma as P.W.2, an eyewitness to the accident and the doctor as P.W.3 and marked Exs.A.1 to A.7; whereas on behalf of the respondents, no witnesses were examined, but a copy of insurance policy was marked as Ex.B.1 on consent.

8. The Tribunal, on appraisal of evidence on record let in by the petitioner, recorded a finding on issue No.1 that due to rash and negligent driving of the driver of the lorry, the accident did take place and, thus, held it in favour of the petitioner.

9. On issue No.2, the Tribunal has not accepted the disability at 30% assessed by P.W.3 and by assigning cogent reasons, excluded the disability certificate marked as Ex.A.6. But, however, basing on the nature of injuries, granted Rs.15,000/- towards grievous injury, Rs.4,000/- towards four simple injuries, Rs.8,000/- towards pain and suffering, Rs.3,000/- towards medical expenses, Rs.3,000/- towards extra nourishment, Rs.5,000/- towards permanent disability and Rs.15,000/- towards future treatment, making a total of Rs.53,000/- with interest at 7.5% per annum.

10. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the Tribunal without considering the evidence of P.W.3, who assessed the permanent disability at 30% in Ex.A.6, granted only meager amount and, therefore, sought to grant the balance amount.

11. Heard Sri D.Kodanda Rami Reddy, learned counsel for the appellant-petitioner. Though, service was completed on respondent Nos.1 and 2, none appears for either of them.

12. A perusal of Ex.A.2-wound certificate would show that the petitioner sustained five injuries and the medical officer certified

that the fourth injury was grievous in nature and the rest are simple injuries. The doctor examined as P.W.3 asserted in his chief-examination that the petitioner had a laceration of 6" x 2" on overall aspect of right forearm exposing median nerve and median artery as mentioned in Ex.A.2 and, on his examination, he found non-functioning of right hand. Thus, the petitioner had volkmann ischemic contracture on right hand and he assessed permanent disability at 30%. He fairly admits in his cross-examination that he did not take X-ray on the petitioner, but only basing on clinical examination, he has issued Ex.A.6-disability certificate showing disability as 30%. That has been the reason the Tribunal has refused to accept Ex.A.6 as well as the evidence of P.W.3 so far as the partial and permanent disability assessed by him. That finding recorded by the Tribunal, therefore, does not warrant interference as it cannot be faulted since based on appreciation of evidence on record.

13. What required to be seen now is, whether the compensation granted by the Tribunal is just and adequate or whether the appellant-petitioner is entitled for enhancement as prayed for?

14. When P.W.1 sustained crush injury, in fact, her hand was not functioning as observed by P.W.3 and the functioning can be only developed on another surgical intervention, certainly, Rs.15,000/- granted by the Tribunal towards grievous injury is on lower side. Therefore, it is enhanced to Rs.25,000/-. For the four simple injuries, the Tribunal has granted Rs.1,000/- each and the same is enhanced to

Rs.3,000/- each making a total of Rs.12,000/- for four simple injuries as against Rs.4,000/- granted by the Tribunal. The amount of Rs.8,000/- granted by the Tribunal towards pain and suffering is maintained and so also, the amount of Rs.3,000/- granted towards medical expenses. The amount of Rs.3,000/- granted by the Tribunal towards extra nourishment is enhanced to Rs.5,000/-, while maintaining Rs.5,000/- towards permanent disability and Rs.15,000/- towards further treatment granted by the Tribunal.

15. Thus, the petitioner is entitled to a total sum of Rs.73,000/- (Rupees seventy three thousand) as against Rs.53,000/- granted by the Tribunal towards compensation and the same is accordingly granted. So far as the rate of interest is concerned, the Tribunal granted the same at 7.5% per annum and the same is maintained on the entire amount of compensation in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**¹.

16. Accordingly, the instant appeal is allowed in part modifying the order passed by the Tribunal, by enhancing the compensation, as indicated above, and confirming the same in all other respects. There shall be no order as to costs.

17. As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, stand closed.

A. SHANKAR NARAYANA, J

17th August, 2016
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¹ 2013 ACJ 1403