

**HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA**

**M.A.C.M.A. No.1440 OF 2009**

**JUDGMENT:**

Dissatisfied with the award of Rs.85,000/- by the learned Chairman, Motor Accidents Claims Tribunal - cum - I Additional District Judge, Mahabunagar (for short 'Tribunal'), through the order and decree, dated 05-09-2008, in O.P. No.766 of 2006, as against the claim of Rs.3,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), the instant Civil Miscellaneous Appeal is preferred by the petitioner.

2. The appellant herein is petitioner in the O.P. before the Tribunal while respondent Nos.1 and 2, who are owner and insurer, respectively, of the lorry bearing No.KA-01-B-2057 that involved in the accident, are respondent Nos.1 and 2, respectively.

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

4. The facts would show that on 17.1.2006 at 7.30 p.m., while the petitioner was proceeding to his relatives house on Pulsar motorcycle from Nandigam to go to Kothur, when reached Vijaya Laxmi Gate on National High Way - VII, a lorry bearing No.KA-01-B-2057, driven in a rash and negligent manner at high speed, came in the opposite direction from Hyderabad proceeding to Shadnagar, dashed his motorcycle, due to which he sustained severe injuries and

he was immediately shifted to Government Hospital, Shadnagar. According to him, he sustained fractures and other injuries all over his body and they are grievous in nature. He took treatment in Government Hospital, Shadnagar and from there he was referred to NIMS Hospital, Hyderabad, where he was treated as inpatient from 17.10.2006 to 15.11.2006 and there, external fixation of right leg was done on 31.10.2006; he states that he spent Rs.1,00,000/- towards medicines and treatment, Rs.10,000/- towards attendants, extra-nourishment, transportation, damage to clothing etc., Stating that he was earning Rs.3,000/- per month as a private employee and due to the injuries he sustained, he became permanently disabled, and, therefore, sought Rs.3,00,000/- towards compensation from the owner and insurer, respectively.

5. Before the Tribunal, respondent No.1, owner of the lorry that involved in the accident, remained *ex parte*.

6. Respondent No.2, insurer, filed counter resisting the claim of the petitioner, but no specific plea was taken; except stating that the amount claimed is highly excessive, sought to dismiss the claim petition.

7. The Tribunal has framed three (3) issues in order to fix responsibility in taking place of the accident and to determine compensation for which the petitioner is entitled.

8. During enquiry, on behalf of the petitioner, he examined himself as PW.1 and an Orthopaedic Surgeon of NIMS Hospital, Hyderabad, as PW.2 and marked Exs.A-1 to A-6 besides Exs.X-1 and X-2. On behalf of the insurer, no oral evidence was adduced, but marked a copy of the insurance policy as Ex.B-1.

9. The Tribunal, having held issue No.1 in favour of the petitioner, on issue No.2, granted Rs.25,000/- towards pain and suffering and for injuries, Rs.30,000/- towards medical expenses though Ex.A-5 shows that he spent Rs.42,979/- under this head, Rs.20,000/- towards purchase of medicines and Rs.5,000/- towards removal of external fixators, extra-nourishment, transport charges and damage to the clothes. This apart, a sum of Rs.5,000/- was granted towards loss of temporary earnings for a period of three (3) months. Thus, a total sum of Rs.85,000/- was granted with interest at 7.5% per annum.

10. The aforesaid order is under challenge in the instant appeal preferred by the petitioner on the ground that meager compensation was granted by the Tribunal.

11. Heard Sri A. Vishnu Vardhan Reddy, learned counsel for the petitioner (appellant).

12. Despite service of notice on the insurer, none appears on its behalf.

13. In the cause title of the grounds of appeal itself, respondent No.1, owner of the lorry that involved in the accident, is shown as 'remained *ex parte* in O.P.' before the Tribunal.

14. Perused the material, both, oral and documentary evidence, on record.

15. PW.2's evidence is material in order to assess whether the compensation granted by the Tribunal is just and adequate. His evidence shows that on 17.10.2006, the petitioner was referred to NIMS Hospital, Hyderabad, from the local Hospital of Shadnagar with injury to his right leg, chest and head in a road traffic accident and he found that the petitioner was in shock when he was admitted and was stabilized by re-succession of giving fluids. The petitioner also sustained fracture of 2<sup>nd</sup> and 3<sup>rd</sup> ribs towards left with surgical emphysema for which ICD was kept and that there were compound fractures to both bones of right leg. The petitioner undergone operation on 31.10.2006 and external fixator was applied to his right leg. Besides the same, there was a wound on the posterior aspect of right leg which requires regular dressing and the same was done. There were compound fractures to both bones of right leg and for the same, operation was conducted. According to him, there was undisplaced fracture of right acetabulem and right patella which were managed conservatively. Even hip injury was also managed conservatively and he was discharged from the hospital on 15.11.2006. He filed Ex.X-1 - original case sheet and Ex.X-2 – final

bill issued by the NIMS Hospital for Rs.42,979/-. No doubt, he was cross-examined and to a question, he expressed inability to explain whether Ex.A-5 bills are genuine or not unless he compares the details in the Accounts Section, but admits that in Ex.A-3, hip injury was not shown. These aspects were not elaborately discussed by the Tribunal and in fact the comments of the Tribunal in regard to Ex.A-5 granting Rs.30,000/- as against Rs.42,979/-, which finds place in Ex.A-2 were based on the answer given by PW.2 in his cross-examination mentioned in the previous sentence. It thus, reflects that the Tribunal did not properly appreciate the evidence on record. Hence, the petitioner is entitled to Rs.42,979/- as Ex.X-2, final bill would reflect the same and copy of the same finds place in Ex.A-5; since Ex.X-2 was coming from the custody of NIMS Hospital and marked through PW.2, it cannot be viewed with any suspicion, but the Tribunal, somehow, viewed with suspicion on a wrong premise.

(a) Now turning to the amount of Rs.25,000/- granted by the Tribunal towards pain and suffering and injuries, absolutely, the said amount is inadequate. It was neither based on any factual analysis nor on the nature of injuries sustained by the petitioner and the suffering he had undergone on account of said injuries. I have already referred to in the above while narrating the evidence of PW.2 as to the injuries sustained by the petitioner and the surgical interventions besides the hip injury being treated conservatively and fracture of 2<sup>nd</sup> and 3<sup>rd</sup> ribs; when kept in view, these fractures and the procedures resorted to by

the NIMS Hospital, the amount of Rs.25,000/- certainly requires enhancement and, therefore, the same is enhanced to Rs.75,000/- including pain and suffering.

(b) Further, the amount of Rs.20,000/- granted towards medicines is maintained and also Rs.5,000/- treating it as the amount granted towards removal of external fixtures based on the evidence of PW.2. Towards extra-nourishment, a sum of Rs.15,000/- is granted and Rs.5,000/- towards transportation charges.

(c) Towards loss of earnings for a period of three (3) months, the Tribunal granted Rs.5,000/-. It is highly unbelievable that the petitioner would become alright within three (3) months for the injuries he sustained. At least, six (6) months he would have taken to regain some sort of normalcy and, therefore, at the rate of Rs.2,000/- per month for a period of six (6) months, Rs.12,000/- is granted, towards loss of temporary earnings.

(d) Thus, the petitioner is totally entitled to Rs.1,74,979/- and the same is rounded off to Rs.1,75,000/-.

16. Accordingly, the petitioner is granted an amount of Rs.1,75,000/- (Rupees one lakh seventy five thousand only) as against Rs.85,000/- awarded by the Tribunal. However, the rate of interest granted by the Tribunal at 7.5% per annum is since in accordance with the rate of interest awarded by the Hon'ble Supreme Court in **Rajesh**

**and others v. Rajbir Singh and others**<sup>1</sup>, the same is maintained on the enhanced compensation also, from the date of petition till realisation.

17. Accordingly, the Civil Miscellaneous Appeal is allowed in part modifying the impugned order and enhancing the compensation, as indicated above. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in the appeal stand disposed of.

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**A. SHANKAR NARAYANA, J**

**August 30, 2016.**

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<sup>1</sup> 2013ACJ1403 = 2013(4)ALT35

