

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.CMA.No.1555 OF 2009

JUDGMENT:

Feeling dissatisfied with the award of Rs.15,000/- as compensation by order and decree, dated 06.06.2007, in O.P.No.893 of 2004 on the file of Chairman, Motor Accidents Claims Tribunal – cum - III Additional District Judge (Fast Track Court), Nizamabad, the present appeal is preferred by the petitioner in the said O.P. seeking enhancement of compensation.

2. The appellant is the petitioner, whereas respondent Nos.1 and 2, who are the owner and insurer of the auto rickshaw that involved in the accident, respectively, are respondent Nos.1 and 2 in the O.P. before the Tribunal.

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 03.02.2004, while the petitioner, along with his wife and others, was travelling in an auto rickshaw bearing registration No.AP-25-U-6637 to go to Bhainsa, at about 11:00 AM, when the auto rickshaw reached the limits of Sevadasnagar Village, since the driver of the auto rickshaw drove it at high speed in a rash and negligent manner, he lost control over the same, as a result of which, the auto rickshaw turned upside down resulting in injuries to the inmates of the auto rickshaw. According to

the petitioner, he was shifted to Government Civil Hospital, Bhainsa, where he took treatment as in-patient, and after discharge, he has taken treatment under a private Doctor and spent Rs.1,00,000/- towards medicines, extra nourishment and other expenses. The petitioner, stating that he was earning Rs.12,000/- per month on cattle business and labour work and on account of the multiple fractures and other grievous injuries sustained by him, he is unable to earn anything, sought a sum of Rs.3,00,000/- as compensation from the respondents.

5. Respondent No.1 remained *ex parte* before the Tribunal.

6. Respondent No.2 opposed the claim.

7. Based on the said pleadings, in the direction of accounting for responsibility about the accident, the Tribunal has framed three issues.

8. During enquiry, petitioner examined himself as PW.1 besides examining Dr. V. Akhilesh, who treated the petitioner and issued Ex.A5 – disability certificate, as PW.2 and marked Exs.A1 to A5 to substantiate the claim laid. On behalf of respondent No.2, no evidence, either oral or documentary, was let in.

9. The Tribunal held issue No.1 in favour of the petitioner on the basis of the evidence of PW.1 and the documentary evidence

through Exs.A1 to A3, which are attested copies of F.I.R., Charge Sheet and injury certificate, respectively.

10. On issue No.2, the Tribunal, observing that PW.2 has not explained the nature of medical record he verified while assessing the disability and even PW.1 did not file the medical record, which is said to have been produced by him before PW.2 at the time of assessment of disability for issuance of the Certificate and that Ex.A5 was issued by PW.2 as a private medical officer, but not as a member of the District Medical Board, discarded the disability certificate marked as Ex.A5 and excluded the evidence of PW.2, and then taking into consideration the injuries described in Ex.A3 – injury certificate issued by the Government Civil Hospital, Bhainsa, awarded Rs.5,000/- for the fracture of left clavicle and Rs.5,000/- for four simple injuries, besides awarding Rs.3,000/- towards cost of medicines and Rs.2,000/- towards extra nourishment and transport charges. Thus, a total sum of Rs.15,000/- was granted, aggrieved by which, petitioner preferred the present appeal.

11. In the grounds of appeal, the appellant contends that the Tribunal has not properly appreciated the evidence on record and mere granting of Rs.10,000/- under the head of injuries was on account of failure to properly appreciate the evidence of PW.2 and the documentary evidence through Ex.A5 and, therefore, seeks to grant the balance amount.

12. Heard Sri Venkateshwar Varanasi, learned counsel for the appellant. Though process was completed on respondent No.2 – National Insurance Company Limited, none appears on its behalf.

13. In the cause title of the appeal, the appellant has endorsed that respondent No.1 – owner of the auto rickshaw is not a necessary party.

14. Perused the order under challenge and the evidence on record, both, oral and documentary, let in by the petitioner.

15. The very fact that PW.2 did not mention on what basis he assessed the disability at 25% and failure of PW.1 to produce the medical record said to have been submitted by him to PW.2 for issue of Ex.A5 and PW.2 not being a member of Medical Board, are all sufficient to reject the stand of the petitioner and hold that the petitioner failed to prove the disability projected by him. Hence, the finding recorded by the Tribunal, excluding disability certificate under Ex.A5 and the evidence of PW.2, is since well reasoned does not warrant interference.

16. Turning to the compensation awarded by the Tribunal, since the petitioner sustained fracture to left clavicle, certainly, the amount of Rs.5,000/- granted by the Tribunal for such fracture and pain and suffering is on lower side. Hence, the same is enhanced to Rs.30,000/-. For four simple injuries, the Tribunal has granted an

amount of Rs.5,000/-. The same is enhanced to Rs.12,000/-. The amount of Rs.3,000/- granted towards cost of medicines is maintained. However, the amount of Rs.2,000/- granted towards extra nourishment and transport charges, since, on lower side, is enhanced to Rs.7,000/-. Towards loss of earnings for a period of three months, a sum of Rs.6,000/-, at the rate of Rs.2,000/- per month, is granted. Thus, the petitioner is totally entitled to Rs.58,000/- as against Rs.15,000/- awarded by the Tribunal. The Tribunal has awarded interest at 7.5% per annum. Since the said rate of interest is in tune with the rate of interest at 7.5% per annum awarded by the Honourable Supreme Court in **Rajesh and others v. Rajbir Singh and others**¹, the same is maintained on the enhanced amount also.

17. Accordingly, the appeal is allowed in part enhancing the compensation from Rs.15,000/- to Rs.58,000/- with interest at 7.5% per annum. Miscellaneous Petitions, if any, pending in this appeal, shall stand closed. There shall be no order as to costs.

A. SHANKAR NARAYANA, J

September 06, 2016.
MD

¹ (2013) 9 SCC 54