

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.882 OF 2009

JUDGMENT:

Having got dissatisfied with the amount of Rs.5,51,000/- granted as compensation by the award and decree dated 04.12.2008, passed in O.P. No.1084 of 2007 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-XVI Additional Chief Judge-cum-II Additional Metropolitan Sessions Judge, Hyderabad (for short, 'the Tribunal'), as against the claim of Rs.10,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), the petitioner-claimant preferred the instant appeal under Section 173 of the Act, seeking enhancement of compensation on the ground that the compensation granted by the Tribunal is inadequate and not just and fair, when kept in view the sufferance he has undergone and has been undergoing.

2. The appellant herein is the petitioner-claimant, while respondent Nos.1 & 3 herein, said to be owners of the crime vehicle, were respondent Nos.1 & 3, and respondent No.2 herein, the insurer of the crime vehicle, is respondent No.2, respectively, in the original petition.

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

4. The facts, in brief, are that on 12.06.2007 at about 01.30 p.m., while the petitioner along with his wife was traveling in their Maruthi van bearing No.AP 28 D 1313 from Turukyamjal towards Brahmanpally, and reached Brahmanpally village limits, a lorry/tipper bearing No.AP 16 U 6958, coming in opposite direction driven by its driver in a rash and negligent manner, dashed the car, due to which, the petitioner sustained as many as seven fractures and was treated in Yashoda Hospital at Malakpet, incurring the amount exceeding Rs.4,00,000/-. The petitioner, stating that he was aged 43 years old at the time of accident, earning Rs.5,000/- per month on agriculture and self-employment, sought a compensation of Rs.10,00,000/-.

5. Respondent Nos.1 and 3, who are said to be the owners of the lorry/tipper, have not chosen to contest the claim petition and remained *ex parte* before the Tribunal.

6. Respondent No.2 – insurer has opposed the claim raising usual pleas, without there being any specific plea as to violation of terms and conditions of the policy, however, reserving its right to raise the defence at an appropriate time by seeking permission of the Court.

7. Basing on the said pleadings, the Tribunal framed three issues.

8. During enquiry, the petitioner examined himself

as P.W.1, besides examining three more witnesses as P.Ws.2 to 4, among whom P.Ws.2 and 3 are the Medical Officers, and marked Exs.A.1 to A.16 to substantiate his claim; whereas, on behalf of the respondent No.2, no witnesses were examined, however, copies of registration certificate and policy were marked as Exs.B1 and B2, respectively, on consent.

9. The Tribunal, on appraisal of evidence, both, oral and documentary, more particularly, Exs.A1 to A3, held that due to rash and negligent driving of the driver of the lorry/tipper, the accident has taken place and, accordingly, held issue No.1 in favour of the petitioner.

10. On issue No.2, the Tribunal, by taking up each component basing on the evidence of P.Ws.1 to 3, granted Rs.50,000/- towards pain and suffering for the injuries sustained by the petitioner; Rs.4,00,000/- towards medical expenses, which includes Rs.20,000/- towards future surgical intervention, though, the claim was Rs.70,000/- based on the evidence of P.W.2, Rs.6,000/- towards extra nourishment, Rs.9,000/- under the head incidental charges, both towards traveling charges and attendant charges, and Rs.12,000/- towards loss of past earnings for a period of four months. Further, towards loss of future earnings, in other words, the partial permanent disability said to have sustained by the petitioner, as against 30% disability

assessed by the Medical Officer under Ex.A13 – disability certificate, the Tribunal, some how, stating that it was on higher side and should not exceed 10%, taken 10% towards partial permanent disability in the direction of determining compensation towards that head, and by applying multiplier '15', as the age of the petitioner was 43 years as on the date of accident, and taking income of the petitioner at Rs.3,000/- per month or Rs.36,000/- per annum, arrived at R.54,000/- ($36,000 \times 10\% \times 15$) towards future loss of earning granted a total compensation of Rs.5,51,000/- awarding interest at 7.5% per annum. Thereafter, the Tribunal, having examined Ex.B1, the copy of the insurance policy, fastened joint and several liability on respondent Nos.1 and 2 only, dismissing the claim petition against respondent No.3.

11. Heard Sri B.Venkat Reddy, learned counsel for the appellant. There is no representation for respondent No.2 – Insurance Company. Though, service was completed on respondent No.1, owner of the vehicle, none appears for him. So far as respondent No.3 is concerned, having shown him as party in the grounds of appeal, it is endorsed that he is not a necessary party.

12. Perused the order and evidence, both, oral and documentary, let in by the petitioners. The evidence of the doctors, who are examined as P.Ws.2 and 3, would clearly show that the petitioner sustained as many as seven

fractures, which are described in paragraph '13' of the order under challenge and, therefore, there is no necessity to extract them, but the fact that the petitioner was repeatedly admitted in Yashoda Hospital, Malakpet, and had undergone surgical interventions thrice, which details have been mentioned in paragraph '15' based on the evidence of P.Ws.2 and 3, with three months bed rest after he had undergone third surgical intervention cannot be disputed.

13. When kept in view, the nature of injuries sustained by the petitioner, they, *ex facie* project the sufferance he had undergone and in such eventuality, the amount of Rs.50,000/- granted by the Tribunal towards pain and suffering has to be construed on lower side and, therefore, the same is enhanced to Rs.1,00,000/-.

14. Towards medical expenditure, the Tribunal has granted Rs.4,00,000/- basing on the bills marked as Exs.A8 to A10 and also Exs.A5 to A7. Therefore, no further amount can be granted under the said head. However, for future surgical intervention, the evidence of the Medical Officer, who is examined as P.W.2, would show that the petitioner requires removal of implants by way of ORIF and estimated the cost at Rs.70,000/-, but, some how, the Tribunal, observing that the said sum is highly exorbitant and excessive and would not exceed Rs.20,000/-, granted Rs.20,000/- towards future operation. Thus, the finding of

the Tribunal appears to be extraneous, without any satisfactory reasons being assigned. Certainly, the specialist's evidence cannot be replaced by the opinion of the Tribunal. In case the Tribunal wants to express any opinion, it must assign positive reasons based on either documentary evidence or probabilities that can be derived from the proved facts. In such an event, certainly, the petitioner is entitled to Rs.70,000/-, but not Rs.20,000/- granted by the Tribunal, and, therefore, the amount of Rs.20,000/- granted towards future operation is enhanced to Rs.70,000/-.

15. Towards extra-nourishment, the Tribunal has granted Rs.6,000/-, keeping in view, the treatment undergone by the petitioner as an inpatient for 37 days and also the requirement of three more months bed rest. The Tribunal went wrong in assessing the extra-nourishment value at Rs.1,500/- per month, when kept in view, the seven injuries sustained by the petitioner, on account of which, his condition would have been serious. Therefore, the amount of Rs.6,000/- granted towards extra-nourishment is enhanced to Rs.15,000/-.

16. The incidental charges granted by the Tribunal was in two parts. The first part relates to the traveling expenses at Rs.6,000/-. The petitioner belongs to Hayathnagar Mandal and to travel to Yashoda Hospital,

Malakpet, where he has undergone surgical interventions thrice, keeping in view, the seven injuries sustained by him and that the number of visits would have been more, the said amount of Rs.6,000/- granted by the Tribunal is on lower side and, as such, the same is enhanced to Rs.12,000/-.

17. Towards attendant charges, the Tribunal has granted Rs.3,000/-. When the bed rest itself was for three months, which the Tribunal has accepted, besides 37 days period relating to the treatment as inpatient, certainly, for six months the petitioner would have required attendant and, therefore, an amount of Rs.12,000/- @ Rs.2,000/- per month for six months is granted, as against Rs.3,000/- granted by the Tribunal.

18. Towards loss of past earnings, the Tribunal has granted Rs.12,000/- @ Rs.3,000/- per month for a period of four months, but, a person with seven fractures would not have become normal to pursue his normal activities within a period of 4 months, but would have taken one year to become normal. In such an event, the petitioner is entitled to Rs.36,000/- @ Rs.3,000 per month for 12 months, as against Rs.12,000/- granted by the Tribunal under this head.

19. Towards loss of future earning capacity, the Tribunal, observing that 30% disability shown in Ex.A13 – disability certificate was on higher side, restricted it to 10%,

but for such restriction, except stating that 30% is on higher side, no other reasons were assigned, nor did it discuss the answers given by the concerned doctors in their cross examination to justify in arriving at 10%, rather than 30% assessed by the doctors. Therefore, that finding is corrected, treating the disability at 30% assessed by the doctors as the actual disability, without embarking upon whether it would affect the entire body or only a part, since the petitioner has sustained seven fractures to various parts of his person, which are unnecessary again to deal with. When 30% disability is considered, the loss of future earning capacity on account of partial permanent disability would work out to Rs.1,62,000/- ($\text{Rs.36,000} \times 30\% \times 15$).

20. Thus, the petitioner is entitled to a total compensation of Rs.8,07,000/-, which is just and adequate, as against Rs.5,51,000/- granted by the Tribunal, and the same is, accordingly, granted. Interest at 7.5% per annum granted by the Tribunal is maintained on the entire amount awarded from the date of petition till realisation.

21. 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.

22. As a sequel thereto, miscellaneous applications,

if any pending in the instant appeal, stand disposed of.

A. SHANKAR NARAYANA, J

05th August, 2016
v v