

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1817 OF 2009

JUDGMENT:

Having got dissatisfied with the award of Rs.1,21,000/- as compensation by the order dated 22.12.2008 in M.V.O.P. No.88 of 2007 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-VI Additional District Judge (Fast Track Court), Guntur (for short, 'the Tribunal') as against the claim of Rs.3,00,000/- laid under Sections 140, 163-A and 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), 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 van bearing registration No.AP 16TV 2012, 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 boy of 16 years age, on 03.11.2006 at about 11-30 a.m., was hit by a van bearing registration No.AP 16TV 2012 near Gundlakamma cross road, six kilometres away from Vinukonda Town, while he was

on foot on the road margin, due to which, he sustained grievous injuries to his right leg below the knee and fractures to his ribs and he was shifted to Vinukonda Private Hospital, from there to Narasaraopet Private Hospital and then to Government General Hospital, Guntur, and relevant treatment was given in Peoples Trauma and Emergency Hospital, Guntur and also in Sri Devi Nursing Home, Guntur, according to the petitioner, who was represented by his father as next friend. Claiming that a sum of Rs.1,50,000/- was spent towards hospital charges and treatment including medical expenses, he sought a sum of Rs.3,00,000/- as compensation against respondent Nos.1 and 2, who are the owner and insurer of the accident vehicle.

5. Respondent No.1-owner of the accident vehicle remained *ex parte*.

6. Respondent No.2-insurer opposed the claim by filing a detailed counter, while seeking protection under Section 170 of the Act.

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

8. During enquiry, P.Ws.1 to 4 were examined besides marking Exs.A.1 to A.6 and Exs.X.1 and X.2 on behalf of the petitioner; whereas on behalf of respondent No.2, no witnesses were examined and no documents were filed.

9. Heard Sri N.Subba Rao, learned counsel for the appellant-petitioner. Though, service was completed on respondent Nos.1 and 2, none appears for them.

10. P.W.4-Medical Officer, referring to the injuries sustained by the petitioner, has assessed disability of 30% and marked certain documents issued by Sridevi Nursing Home but the Tribunal has not considered the same. So far as medical bills issued by Sridevi Nursing Home are concerned, the Tribunal, however, keeping in view, the petitioner sustained grievous injuries, they being fracture of right tibia, and observing that P.Ws.2 and 4 sworn in and projected exaggerated versions, granted Rs.50,000/- towards pain and suffering, Rs.25,000/- towards medical expenses, Rs.3,000/- towards transportation, Rs.3,000/- towards extra nourishment and Rs.40,000/- towards permanent disability, making a total of Rs.1,21,000/- with interest at 7.5% per annum.

11. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the Tribunal has not properly appreciated the evidence of P.W.4 and the fact that the petitioner was hospitalized for 66 days was not considered and the amounts awarded under each head were meager and 30% disability spoken to by P.W.4 was not considered and, therefore, sought to grant the balance amount.

12. Ex.A.3 is the wound certificate issued by Peoples Trauma and Emergency Hospital, Guntur. The Medical Officer found the following injuries:-

"(1) An abrasion of 2.0 cm x 1.0 cm over the lateral malleolus of the right leg.

(2) An abrasion of 2.0 cm x 2.0 cm over the lateral aspect of right leg.

(3) An abrasion of 1.0 cm x 1.0 above 5th toe of right leg.

(4) An abrasion of 4.0 cm x 2.0 cm over the lateral aspect of right chest.

(5) Right haemothorax.

(6) Left haemothorax.

(7) Lacerated wound of 20 cm x 20 cm right leg anterior medial aspect with fracture of tibia and fibula exposing out (X-ray shows fracture of right tibia and fibula)."

The Medical Officer opined that injury Nos.5, 6 and 7 are grievous in nature. The petitioner was admitted in Peoples Trauma and Emergency Hospital, Guntur on 04.11.2006 and discharged on 06.11.2006. P.W.4, though, claimed that he issued Exs.A.5 and A.6, but, in fact, his evidence shows that he was working as Consultant Orthopaedic Surgeon in Dr. Ch.Krishnaiah Multi Specialty Hospital, Tenali, and also as Consultant Orthopaedic Surgeon in Sri Devi Nursing Home, Guntur. He has asserted that the petitioner was shifted to Peoples Trauma and Emergency Hospital, Guntur for ICU treatment and he had undergone bilateral intercostal tube drainage on

03.11.2006 and on 04.11.2006 wound debridement was done and external fixator was applied, and then he was shifted to Sri Devi Nursing Home for further Orthopaedic management on 06.11.2006, where muscle flap surgery was done on 26.11.2006, and ilizarov fixator and S.S.G. done on 18.12.2006 and thus, he states the following:

- 1) Wound debridement, external fixator application on 04.11.2006.
- 2) Soleal muscle flap transfer surgery on 26.11.2006.
- 3) Ilizarov fixator and S.S.G. done on 18.12.2006.
- 4) Ilizarov fixator was removed on 26.12.2007.

having been undergone by the petitioner. According to him, he has assessed 30% disability, since there was deformity of right lower limb and even he advised amputation of right lower limb, but somehow, it was not done.

13. Be that as it may, the Tribunal, since accepted partial permanent disability and awarded Rs.40,000/-, keeping in view, the age of the petitioner, the partial permanent disability perhaps the deformity of right lower limb would continue, the amount of Rs.40,000/- granted by the Tribunal is enhanced to Rs.75,000/-. For three fractures, the Tribunal granted Rs.50,000/- towards pain and suffering. The same is enhanced to Rs.75,000/-. The amount of Rs.25,000/- granted by the Tribunal towards medical expenses is confirmed for the reason that the evidence of P.W.2 was not accepted by the Tribunal as his evidence suffers from exaggeration and there

are certain corrections in the certificate issued by P.W.4 himself by affixing a revenue stamp. Towards transportation, the Tribunal has granted Rs.3,000/- and the same is maintained. The amount of Rs.3,000/- granted by the Tribunal towards extra nourishment is enhanced to Rs.10,000/-.

14. Thus, the petitioner is entitled to a total sum of Rs.1,88,000/- (Rupees one lakh and eighty eight thousand) as against Rs.1,21,000/- (Rupees one lakh and twenty one thousand) 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.

15. 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.

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

A. SHANKAR NARAYANA, J

12th September, 2016

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¹ 2013 ACJ 1403