

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1528 OF 2005

JUDGMENT:

The instant appeal is preferred by the petitioner seeking enhancement on the ground that the amount of Rs.50,000/- granted as compensation by the order and decree, dated 12-04-2005, in M.V.O.P. No.833 of 2002, on the file of the Chairman, Motor Accident Claims Tribunal –cum- Additional District Judge, Vijayawada (for short 'the Tribunal'), as against the claim of Rs.2,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') read with Rule 455 of the Andhra Pradesh Motor Vehicles Rules, 1989 for the injuries sustained by the petitioner, was very meager.

2. The appellant herein is the petitioners in M.V.O.P. before the Tribunal, while respondent Nos.1 and 2, who are owner and insurer of lorry bearing registration No.UP 91A 9070, respectively, are Respondent Nos.1 and 2, respectively.

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

4. The facts, in brief, are that on 25-06-2002 at

about 9.00 p.m., the petitioner, who was minor on the date of filing the claim petition, was proceeding on his vehicle on the left side margin of the road and when he reached near Penamaluru bus stop, a lorry bearing registration No.UP 91A 9070 belonging to respondent No.1 and insured with respondent No.2 driven by its driver at high speed in a rash and negligent manner coming from opposite direction hit the petitioner, due to which, the petitioner sustained injuries. He was initially shifted to Dr. V. Shiva Kumar's Hospital and then he was shifted to Dr. Kalesha Hospital, where he was treated as in-patient for the grievous injury sustained by him, and on coming to know about the accident, the police also registered case against the driver of the lorry. According to the petitioner, who was represented by his father as next friend, he was 12 years old, studying 7th class, hale and healthy at the time of accident and due to the accident, his studies were affected and he suffered mental shock and agony and, therefore, sought to grant the aforesaid amount.

5. Respondent No.1, owner of the lorry, remained *ex parte* before the Tribunal.

6. Respondent No.2 - Insurance Company opposed the claim.

7. Based on the pleadings, the Tribunal framed

three issues in the direction of fixing liability and compensation to which the petitioner entitled.

8. During inquiry before the Tribunal, father of the petitioner examined himself as PW.1, besides examining Dr.Sk. Kaleshavali as PW.2 and exhibited Exs.A-1 to A-13. On behalf of respondent No.2, no witnesses were examined and no documents were filed.

9. On issue No.1, the Tribunal found favour with the petitioner. On issue No.2, having culled out from Ex.A-2, wound certificate, issued by Dr.V. Siva Kumar and Ex.A-3, discharge summary, that the petitioner sustained one grievous injury and was treated as in-patient for some period, granted a sum of Rs.20,000/- for the injury; Rs.10,000/- towards medical expenses as against Rs.45,000/- claimed by the petitioner by recording certain reasons to the effect that in Ex.A-4 the figures mentioned in rupees were inflated; Rs.10,000/- towards treatment in another hospital; and Rs.10,000/- towards extra nourishment, pain and suffering and inconvenience and, thus, granted a sum of Rs.50,000/- as compensation with interest at 9% per annum thereon.

10. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the Tribunal has not appreciated the evidence, both, oral and

documentary in proper perspective and that the Tribunal has granted very meager compensation and, therefore, sought to grant balance amount.

11. Heard Sri V. Padmanabha Rao, learned counsel for the appellant, and Sri N. Parameswara Reddy, learned standing counsel for respondent No.2 – Insurance Company. Though, notice on respondent No.1 was served as notice was addressed to the address mentioned in the cause title, none appears. Non-appearance on behalf of respondent No.1 makes no difference as respondent No.1 has already suffered a decree before the Tribunal.

12. On perusal of the evidence and material on record, it is to be found that the petitioner sustained head injury and Dr. V. Shiva Kumar was the Neuro Specialist under whom the petitioner was got treated initially, who issued Ex.A-2 wound certificate. It is no doubt true, that the said doctor was not examined, but Dr. Sk. Kalashavali was examined as PW.2 in whose hospital subsequently the petitioner had taken treatment. The CT scan of head and brain were performed without contrast on 25-06-2002 as reflected in Ex.A-12 issued by PW.2 and it shows thus:

“Fracture (r) temporal bone.
Haemorrhage contusion in ® temporal
lose
No shift of midline structures.
No infarct pathology.

Cisterning spaces appears normal.
Ventricular system appears normal.
Orbits sella appears normal.
Forra - normal
1. Fracture (r) temporal bone
2. Haemorrhage contusion in (r) temporal
lose.”

PW.2's evidence proves the nature of injuries mentioned in Ex.A-12 scanning report. The record also would reveal donors were summoned and blood was received as in Ex.A-6 indicating that the petitioner was given blood also. When the petitioner sustained head injury and even scanning report marked as Ex.A-12 is to be found, certainly, for the head injury which would have been considerably affected his studies, the amount of Rs.20,000/- granted by the Tribunal towards injury is enhanced to Rs.50,000/- including pain and suffering. The amounts of Rs.10,000/- and Rs.10,000/- were granted towards medical expenditure though it was shown as Rs.45,000/-. But, however, the evidence of PW.2 would prove the medical bills and, therefore, the amount of Rs.45,000/- is granted as medical expenditure as against the amounts of Rs.10,000/- and Rs.10,000/- granted by the Tribunal. The amount of Rs.10,000/- granted by the Tribunal towards extra nourishment is maintained. Towards conveyance charges and attendant charges, a sum of Rs.10,000/- is granted. Thus, in all, the petitioner is entitled to Rs.1,15,000/- as compensation as

against the amount of Rs.50,000/- granted by the Tribunal.

13. Concerning rate of interest, the Tribunal granted it at 9% per annum, the same is not disturbed. But, on the enhanced amount, rate of interest at 7.5% per annum is granted in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**^[1].

14. In the result, the appeal is allowed in part, and the order and decree, dated 12-04-2005, in M.V.O.P. No.833 of 2002, passed by the Tribunal are modified enhancing the compensation to Rs.1,15,000/- (Rupees one lakh and fifteen thousand) from Rs.50,000/- with interest at 9% per annum on the amount of Rs.50,000/- granted by the Tribunal and at 7.5% per annum on the enhanced amount of Rs.65,000/- (Rupees sixty five thousand) from the date of petition till realization. There shall be no order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

April 04, 2016.

Mgr

[\[1\]](#). 2013 ACJ 1403