HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2117 OF 2009

JUDGMENT:

Feeling dissatisfied that the amount of Rs.40,000/- granted as compensation, by the order and decree, dated 12.11.2008, in O.P. No.690 of 2005 passed by the Chairman, Motor Accident Claims Tribunal - cum - II Additional District Judge, Ranga Reddy District at L.B. Nagar (for short 'the Tribunal') as against the claim of Rs.7,50,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), the present appeal is preferred by the petitioner under Section 173 of the Act.

2. The appellant herein is the petitioner, while respondent Nos.1 and 2, who are owner and insurer of Lorry No.AP 11U 969, respectively, are respondents as such in the aforesaid O.P.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed in the aforesaid OP.

4. The facts would reveal that on 21.05.2005, while the petitioner was proceeding on his scooter bearing registration No.AP 27A 3712 from Nadergul village towards Hyderabad, and when reached near M.V.S.R. Engineering College at Srinilayam township at about 9.30 a.m., a lorry bearing registration No.AP 11U 969 driven by its driver at high speed in a rash and negligent manner came and dashed his scooter, due to which, he fell down and sustained injuries.

Claiming that he was treated in S.V. Multispecialty Hospital and Yashoda Hospital; incurred huge amount, sustained disability, sought the aforesaid sum,

5. Respondent Nos.1 and 2, who are owner and insurer respectively of the lorry, filed their separate counters opposing the claim. Respondent No.1, however, pleaded that respondent No.2 being the insurer is obligated with the duty to indemnify him and, therefore, sought to dismiss the claim petition against him.

6. The Tribunal has framed three issues basing on the pleadings of rival parties.

7. During inquiry, the petitioner besides examining himself as PW.1, has examined one Dr. D.V.S. Ramakrishna Prasad from S.V. Multispecialty Hospital, Hyderabad, and Dr. A. Aravinda Kumar from Yashoda Hospital, Hyderabad and Sri G. Ram Reddi, who is connected with maintenance of accounts in Yashoda Hospital, as PWs.2 to 4 respectively, besides exhibiting Exs.A-1 to A-18 to substantiate his claim. On behalf of respondent No.2 - Insurer, Sri G. Sridhar Reddy, is examined as RW.1 and marked Exs.B-1 to B-6 amongst which Ex.B-2 is the letter issued by S.V. Multispecialty Hospital.

8. The Tribunal found favour with the petitioner on issue Nos.1 and 2. But, on issue No.1, the Tribunal disbelieved the evidence of PW.2 and the stand put forth by the petitioner that he was treated in S.V. Multispecialty Hospital as in-patient by assigning certain reasons touching Ex.A-8 basing on the evidence of PWs.2 and 3 and RW.1 and found that Ex.A-8 was a fabricated document which is discharge summary said to have issued by S.V. Multispecialty Hospital, Hyderabad, observing that there have been interpolation by way of corrections which are clear even to a naked eye, as the figure '0' in the date 30.5.05 was neatly erased and included the figure '1' so as to indicate that he was discharged on 31.5.2005 and the discharge summary - Ex.A-8, which relates to one Ms. Manemma, was duplicated into the name of petitioner and filed into Court and, finally, opined that the petitioner is entitled towards loss of income for the period of one month, for which a sum of Rs.3,000/- was granted.

i) Basing on Ex.A-4 - medico legal certificate and the evidence of PW.3 referring to the Second Schedule to Section 163-A of the Act, granted Rs.5,000/- towards grievous injury and Rs.1,000/- towards simple injury, making a total of Rs.7,000/- under the head of pain and suffering and towards medical expenses, a sum of Rs.28,247/- rounding off to Rs.30,000/- was granted, making a total of Rs.40,000/- as compensation and awarded interest at 7.5% per annum.

9. The aforesaid order has been under challenge in the instant appeal by the petitioner, mainly contending that the Tribunal, despite the evidence of PW.2 to substantiate the contents of Ex.A-8, somehow, overlooked it and recorded certain reasons holding that it was not a genuine document. It is also stated that no importance ought to have attached to the contents in Exs.B-1 to B-5, hence, sought to grant balance amount.

10. Heard Sri T. Chandra Shekar, learned counsel for the appellant and Sri Sri G. Sundara Ramayya, learned standing counsel for respondent No.2 - Insurer. Though, service was completed on respondent No.1, none appears for him.

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

12. The learned counsel for respondent No.2 would submit that the Tribunal recorded definite findings in paragraph No.10 in disbelieving the entries in Ex.A-8, discharge summary and arrived at the finding that Ex.A-8 was fabricated by duplicating the same which relates to one Ms. Manemma and, therefore, the petitioner is not entitled to any enhancement.

13. A perusal of Ex.A-8, discharge summary said to have issued by S.V. Multispecialty Hospital, in fact, shows that the date was altered, that too, in regard to date of admission showing it as

31.5.2005. Even the column filled against 'diagnosis' is in different ink, and therefore, the observations made by the Tribunal cannot lightly be brushed aside, more particularly, when PW.1 himself, in his cross-examination, strangely expresses ignorance as to whether S.V. Multispecialty Hospital issued any letter stating that he has taken treatment only as an out-patient. No doubt, he denied the suggestion that after he was discharged from Yashoda Hospital, he has taken treatment as out-patient, but, in the presence of alterations in Ex.A-8, as noted by the Tribunal, the said denial would not have any effect, and on the other hand, it supports the stand taken by the Insurer. Therefore, the evidence relating to the so-called treatment said to have undergone by the petitioner in S.V. Multispecialty Hospital and the evidence of PW.2, certainly, have to be ignored which the Tribunal has rightly done and the same cannot be faulted.

14. Now, turning to compensation as to whether the amount granted by the Tribunal is just and adequate, even taking into consideration the evidence of PW.3 and other documentary evidence relating to the treatment, the petitioner had undergone in Yashoda Hospital, certainly, it is to be stated that the amounts granted by the Tribunal are on lower side. PW.3's evidence would show that the petitioner was admitted in Yashoda Hospital on 21-05-2005 having sustained fracture of pelvis, penetrating injury to Anal Region, and he has undergone surgical intervention of right thigh and Urologist has

done Suprapubic Catheterization and the hematoma was drained on 26.05.2005, and discharged on 31.05.2005 on his request against the medical advice. No doubt, he was cross-examined by the learned counsel for the insurer, but nothing is brought out to hold that the petitioner did not undergo any treatment in Yashoda Hospital. The evidence of PW.4 would show that the petitioner has spent Rs.28,247/- towards hospital charges and Rs.6,300/- towards doctor's fee making a total of Rs,.34,547/-, besides the payment of Rs.6,700/- towards CT scan test undergone on 21.5.2005. Thus, towards medical charges itself the petitioner is entitled to a total sum of Rs.34,547/-; Rs.6,700/-, making a total of Rs.41,247/-. Therefore, the said amount is granted as against the amount of Rs.30,000/- granted by the Tribunal towards medical expenses.

15. The claim was laid under section 166 of the Act. The Tribunal while awarding compensation towards pain and suffering basing on the injuries, somehow, referred to the second schedule to Section 163-A of the Act, though, the claim was not laid under Section 163-A of the Act. Thus, certainly, the Tribunal went wrong in picking up the entries or the amounts mentioned in the second schedule, which, in fact, was introduced with effect from 14.11.1994. Therefore, the petitioner is entitled to enhanced amounts in regard to the injuries and also pain and suffering put together, though not the petitioner able to prove partial permanent disability said to have

sustained by him. The nature of injuries sustained by the petitioner, as mentioned in the above while referring to the evidence of PW.3 are first injury is to the pelvis which is a fracture sustained by the petitioner. Therefore, certainly, he is entitled to a sum of Rs.40,000/- towards injury as well as pain and suffering put together. Towards extra nourishment, he is also entitled to Rs.10,000/- keeping in view the nature of injuries and sufferance he had undergone and, accordingly, the same is awarded. Towards loss of temporary earnings, the Tribunal has granted Rs.3,000/-, but the same is enhanced to Rs.9,000/- keeping in view that at least three months would have taken for the petitioner to attend to his activities as hitherto he was pursuing. Towards transport charges, a sum of Rs.2,000/- is granted. Further, a sum of Rs.3,000/- is granted towards attendant charges. Thus, the petitioner is entitled to a total sum of Rs.1,05,247/- as compensation as against the amount of Rs.40,000/- granted by the Tribunal.

16. Even, the rate of interest awarded by the Tribunal at 7.5% per annum is in tune with the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**[1] and, therefore, the same is maintained.

17. In the result, the appeal is allowed in part, and the order and decree, dated 12-11-2008, in O.P. No.690 of 2008, passed by the

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[1]. 2013 ACJ 1403

Tribunal are modified enhancing the compensation to Rs.1,05,247/- (Rupees one lakh five thousand two hundred and forty seven) from Rs.40,000/- with interest at 7.5% per annum thereon from the date of petition till realization. No order as to costs.

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

A. SHANKAR NARAYANA, J

December 23, 2016.
Mgr