

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.CMA.No.1552 OF 2009

JUDGMENT:

Dissatisfied with the award of Rs.2,87,000/- as compensation by order and decree, dated 18.03.2005, passed in O.P.No.180 of 2004 (old O.P.No.242 of 2003) on the file of Chairman, Motor Accidents Claims Tribunal – cum – II Additional District Judge, Nalgonda at Suryapet, as against the claim of Rs.4,00,000/- laid under Sections 166 and 140 of the Motor Vehicles Act, 1988, the present appeal is preferred by the petitioner in the said O.P., seeking to grant the balance amount.

2. The appellant is the petitioner, while respondent Nos.1 and 2, who are the owner and insurer of the vehicle that involved in the accident, 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 would show that on 11.11.2002 at about 03:30 PM, while the petitioner, as a pillion rider, was proceeding on Hero Honda Splendor motorcycle bearing registration No.AP-28-AA-4358, along with his friend Uppalaiah, rider of the motorcycle, and when they reached near Uppal ring road, since the rider of the motorcycle drove it in a rash and negligent manner at high speed, while overtaking the

vehicles, dashed a bullock cart proceeding ahead of them, due to which, the petitioner sustained injuries to his abdomen and other parts of the body. He was immediately shifted to his house in an Auto Rickshaw, where he started vomiting blood. Immediately, he was shifted to Yashoda Hospital at Malakpet, Hyderabad. Since he sustained blunt and crush injuries to the abdomen with tear of small bowel and transection of sigmoid colon with shattered edges with mesenteric tear, the Doctors treated him. Concerned police registered a case against the rider of the Hero Honda. The petitioner, claiming that he was earning Rs.10,000/- per month and lost his earning capacity totally, sought a sum of Rs.4,00,000/- as compensation.

5. Respondent No.1, owner of the Hero Honda, has not contested the claim.

6. Respondent No.2 – Insurance Company filed counter opposing the claim.

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

“1. Whether the accident was due to the rash and negligent driving by the rider of Hero Honda Splendor Motor Cycle bearing No.AP-28-AA-4358?

2. Whether the petitioner is entitled for compensation, if so, what is the quantum of amount?

3. To what relief?”

8. During enquiry, petitioner examined himself as PW.1 besides examining Dr. B. Mahender Reddy - Head of the Department General Surgeon, Yashoda Hospital, Hyderabad, as PW.2 and Kanatham Suvarna, his wife, as PW.3, and marked Exs.A1 to A11 to substantiate the claim laid. On behalf of respondent No.2, no oral evidence was let in, but Copy of Insurance Policy was marked as Ex.B1.

9. The Tribunal, having recorded a finding on issue No.1 in favour of the petitioner, on issue No.2, though, observed that the disability certificate marked as Ex.A10 does not show the percentage of disability, but basing on the evidence of PW.2, and the nature of injuries sustained by the petitioner, and also taking into account Ex.A11 – Salary Certificate, showing that the petitioner was drawing Rs.10,000/- per month as technician, granted Rs.60,000/-, at the rate of Rs.10,000/- per month, towards loss of income for the period of six months during which the petitioner was bed ridden, besides granting Rs.2,22,000/- towards medical expenses and Rs.5,000/- to the grievous injury, thus, making a total of Rs.2,87,000/- with interest at 9% per annum from the date of petition till realisation.

10. On the ground that the petitioner has to suffer throughout his life with dis-functioning of bowl system on account of the injuries to the intestine, the instant appeal is preferred seeking to grant the balance amount.

11. Heard Sri M. Madhava Reddy, learned counsel for the appellant. On 05.08.2016, since there was no representation for respondent Nos.1 and 2, though, they entered appearance by engaging respective counsel, the matter was directed to be listed today under the caption 'for orders'.

12. Even today, there is no representation for either of the respondents.

13. Perused the order under challenge and the material on record.

14. Though, the lower Court records yet to be transmitted, learned counsel for appellant has produced copy of the deposition of PW.2 – Medical Officer for perusal.

15. As could be seen from the evidence of PW.2 - Medical Officer and the findings recorded by the Tribunal, certainly, the petitioner is entitled to Rs.4,00,000/- as claimed by him for the reason that he has to suffer throughout his life and he must be under the supervision of a Doctor, as he was operated and cannot pass stools naturally and artificial system (colostomy bag) has to be used, which would cost Rs.2,000/- to Rs.3,000/- per colostomy bag. For better appreciation, it would be relevant if the evidence of Medical Officer in his chief-examination is extracted, which is thus:

“Since 10 years I am working as a doctor in this Hospital, presently I am the Head of the Department of General Surgery. I know the pw.1 who is present to-day in this hospital by name K.Papaiah Ex.A-7, Ex.A-8, Ex.A-9 (Bunch of Medical Bills) are issued by our hospital. The patient (Pw-1) sustained injury in road traffic accident they are crush injury Recto sigmoid, Blunt injury Abdomen with transection of small bowel (Ileum). Crush injury sigmoid colon with avulsion of anterior abdominal wall muscles. The entire treatment is given under my supervision. Small bowel transection and transection sigmoid colon with shattered edges transection of small bowel and end to end transection. Distal rectal stump closed, Sigmoid end colostomy done. Mesh repair is done. It is true the patient cannot pass stools by naturally due to this injuries by way of operating this stools will come out directly. The system is artificial and this will be affective till his life time. The patient will suffer his lifetime and he must under go the supervision of the doctor. The instruments which is necessary for artificial natural calls (stools) and for that purpose the artificial machinery (Colostomy Bag) to be used in his life time. The market value is near about Rs.2,000/- to 3,000/- to colostomy bags. No other remedy for his life time. His date of admission 11-11-2002 and date of discharge is 2-12-2002. Date of operation 11-11-2002. The medical estimation is issued by our hospital. i.e., Ex.A-8”

16. Except suggesting to the witness that the system has been rectified by surgical intervention and that the use of colostomy bag is unnecessary, there is nothing else in the cross-examination to discredit the evidence of the Medical Officer. Further, it was elicited in the cross-examination that the colostomy bag expenditure is very high.

17. Hence, the appeal is allowed granting Rs.4,00,000/- as compensation, as claimed by the petitioner, as against Rs.2,87,000/- granted by the Tribunal, while maintaining the rate of interest at 9% per annum on Rs.2,87,000/- awarded by the Tribunal and on the enhanced amount, interest is awarded at 7.5% per annum in view of the decision of the Honourable Supreme Court in **Rajesh and others v. Rajbir Singh and others**¹

18. Miscellaneous Petitions, if any, pending in this appeal, shall stand closed. There shall be no order as to costs.

A. SHANKAR NARAYANA, J

August 12, 2016.
MD

¹ (2013) 9 SCC 54