

**HONOURABLE SRI JUSTICE A. SHANKAR
NARAYANA**

M.A. C.M.A. No.2891 OF 2005

JUDGMENT:

Dissatisfied with the award of Rs.75,000/- towards compensation as against the claim of Rs.1,50,000/- laid under

Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), appellant preferred this Civil Miscellaneous Appeal against the order and decree, dated 05.07.2005, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - I Additional District Judge, Medak at Sanga Reddy, in O.P. No.432 of 2003, seeking enhancement of compensation.

2. The appellant herein is the petitioner in the O.P. before the Tribunal, while respondent Nos.1 and 2, who are owner of Borewell Rig Mobile Drilling Vehicle bearing No.AP-10-H-9799 that involved in the accident and its insurer, respectively, are respondent Nos.1 and 2, respectively.

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

4. The facts, in brief, are that on 09-03-2001, while

the petitioner was proceeding in the auto-rickshaw bearing No.ABT - 4884 towards Zaheerabad, near Digwal, a bore-well rig mobile drilling vehicle bearing No.AP-10-H-9799 came in the opposite direction driven in a rash and negligent manner at high speed, hit the auto-rickshaw, due to which, inmates of the auto-rickshaw including the petitioner sustained injuries. According to the petitioner, he sustained fracture of upper shaft of right thigh, left tibia, lower shaft of left leg and right patella and also sustained other injuries on his person and he was treated as inpatient in Osmania General Hospital, Hyderabad. He spent Rs.25,000/- towards treatment, sustained disability, unable to move and walk and he was put to great physical and mental pain due to the injuries and that he was earning Rs.2,500/- per month by working in a transport company at Zaheerabad, and, therefore, sought to grant Rs.1,50,000/- towards compensation.

5. Respondent No.1, owner of the bore-well drilling vehicle that involved in the accident, remained *ex parte* before the Tribunal.

6. Respondent No.2, insurer of the vehicle, opposed the claim by raising various pleas.

7. The Tribunal framed three (3) issues in order to determine compensation as well as negligence in taking place of the accident.

8 . During the course of enquiry, the petitioner, besides examining himself as PW.1, examined the doctor, who treated him, as PW.2 and marked Exs.A-1 to A-7. On behalf of the insurer, a copy of the insurance policy of the vehicle involved in the accident was marked as Ex.B-1 on consent, but no witnesses were examined.

9. The Tribunal, held on issue No.1 that due to rash and negligent driving of the bore-well drilling vehicle, the accident had occurred and, accordingly tendered finding. On issue No.2, considering the evidence of PW.2, though, the Tribunal has not acceded to the stand of the petitioner that he had sustained 50% partial permanent disability as spoken by PW.2, on the ground that there was competent medical board to issue disability certificate, but not PW.2, but, still holding that the petitioner sustained some disability, granted Rs.20,000/- for the same besides Rs.9,750/- towards medicines and treatment and Rs.45,250/- towards special and general damages, and, thus, granted a total sum of Rs.75,000/- towards compensation with interest at 7.5% per annum.

10. It is the aforesaid order, which is challenged in the instant appeal seeking enhancement of compensation on the grounds that the petitioner became permanently disabled, but the Tribunal overlooked the said fact and

granted meagre compensation by rejecting 50% partial permanent disability as contained in Ex.A-4 and the evidence of PW.2, and, therefore, sought to grant balance amount.

11. Heard Sri Sriharinath, learned counsel for the petitioner (appellant), and Smt. I. Maamu Vani, learned counsel for the insurer.

12. Despite service of notice on respondent No.1, owner of the bore-well drilling vehicle, none appears on his behalf.

13. The only short point that arises for consideration is whether the finding recorded by the Tribunal in regard to excluding Ex.A-4 - disability certificate and the evidence of PW.2 is incorrect and whether the petitioner is entitled to enhancement of compensation?

14. Perused the order impugned and the evidence available on record.

15. PW.2 made a categorical admission that there has been a Medical Board in Osmania General Hospital to issue any disability certificate. No disability certificate was issued by PW.2 as per his own admission, but, he has only spoken to in his evidence that the petitioner had suffered 50% partial permanent disability on account of injuries. He has also spoken to that there was shortening

of leg by one inch (1") and infection of chronic osteomyelitis, but admits that

Ex.A-4, which is discharge ticket issued by the Osmania General Hospital, does not refer to the same. Hence, the partial permanent disability spoken to by PW.2 was rightly rejected by the Tribunal and that finding recorded by the Tribunal cannot be interfered with. However, as seen from the evidence of PW.2 and the medical evidence, petitioner was admitted in the hospital on 09-03-2001 and was discharged on 04-04-2001. He sustained fracture of both bones of left leg and compound comminuted fracture of right femur, and the injuries being grievous and has undergone surgical interventions for both the injuries. It has also come up in the evidence of PW.2, that PW.1 suffered some that he suffered some chronic infection of osteomyelitis of right femur with ankylosis of right knee joint, but the Tribunal appears to have taken the limping of PW.1 and granted Rs.20,000/- towards disability. When viewed in that angle, certainly, the petitioner is entitled to Rs.30,000/- for each fracture and for both the fractures he is entitled to Rs.60,000/-. He is entitled to Rs.15,000/- towards pain and suffering and Rs.10,000/- towards extra-nourishment. Since he took treatment in Government Hospital as inpatient, certainly, he must have required assistance of an attendant, at least, for a period of three months, as such, a sum of Rs.6,000/- is awarded towards attendant charges, and Rs.3,000/- towards transportation.

The amount of Rs.20,000/- granted by the Tribunal towards loss of amenities i.e., towards disability is confirmed, besides the amount of Rs.9,750/- towards medicines and treatment.

Further, the rate of interest granted by the Tribunal at 7.5% per annum is also maintained in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**^[1],

16. Thus, the petitioner is entitled to a total compensation of Rs.1,14,000/- (Rupees one lakh fourteen thousand only) as against Rs.75,000/- awarded by the Tribunal, and the same is accordingly awarded with interest on the entire compensation at 7.5% per annum, from the date of petition till realisation.

17. Accordingly, the Civil Miscellaneous Appeal is allowed in part modifying the impugned award passed by the Tribunal, by enhancing the compensation, as stated supra. There shall be no order as to costs.

18. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal stand disposed of.

A. SHANKAR NARAYANA, J

January 21, 2016.

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[\[1\]](#) 2013ACJ1403 = 2013(4)ALT35