

**HONOURABLE SRI JUSTICE A. SHANKAR
NARAYANA**

M.A. C.M.A. No.1652 OF 2005

JUDGMENT:

The instant appeal is preferred having dissatisfied with the award of Rs.5,000/- as compensation as against the claim of Rs.2,00,000/- laid under Section 166(1)(a) of the Motor Vehicles Act, 1988 read with Rule 455 of the A.P. Motor Vehicles Rules 1989, by the order and decree, dated 22.02.2005, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - IV Additional District Judge (Fast Track Court), Nizamabad.

2. The appellant herein is the petitioner in the O.P. before the Tribunal, while respondent Nos.1 and 2, who are owner and insurer, respectively, of the Jeep bearing No.AP-25-F-888 that involved in the accident, are respondent Nos.1 and 2, respectively.

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

4. The facts would show that on 25.08.2002 at about 6.00 p.m., while the petitioner along with others was travelling in a Tata Sumo Jeep bearing No.AP-25-F-888 from Nizamabad towards Vemulawada side i.e.,

Kamareddy side, when they reached near Eluru Daba Mess, Thirumanpally village sivar on Nagpur to Hyderabad road, High Way - 7, since driver of the tata-sumo drove it in a rash and negligent manner at high speed and unable to control the speed, hit against a road side tree, resulting in injuries to the petitioner all over his person. She was immediately shifted to Government Head Quarters Hospital, Nizamabad and from there she was shifted to Amrutha Laxmi Hospital, Nizamabad, and treated by Dr. G. Jaya Prakash, Orthopaedic Surgeon - PW.2. She claims that she spent Rs.1,00,000/- towards medical expenses. She was vegetable vendor and was earning Rs.10,000/- per month and she became disabled on account of injury and, therefore, estimated the loss of dependency towards general and special damages at Rs.12,80,000/-, but restricted it to Rs.2,00,000/-.

5. Respondent No.1, owner of the tata-sumo that involved in the accident, remained *ex parte* before the Tribunal.

6. Respondent No.2, insurer of the tata-sumo, opposed the claim by raising various pleas.

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

8. During enquiry, the petitioner examined herself as PW.1 and one Dr. G. Jaya Prakash, who treated her, as PW.2 and also marked Exs.A-1 to A-6. On behalf of the respondents, no oral or documentary evidence was adduced.

9. On issue No.1, the Tribunal recorded a finding in favour of the petitioner. On issue No.2, though, discussed elaborately the evidence of PW.2 and the scan report (receipt, report not produced before the Court) marked as Ex.A-4 and even observing that there was fracture to left temporal bone, but, however, observing that PW.2 was not competent and he himself issued the same, and that the certificate issued by the Government Hospital was not produced, awarded Rs.2,000/- towards injuries treating the same as simple in nature and Rs.3,000/- towards extra-nourishment.

10. It is the aforesaid order which is under challenge in the instant appeal requesting to grant the balance amount on the ground that the Tribunal has not properly appreciated the evidence on record and that the petitioner sustained 10% permanent disability and Ex.A-6 was issued by PW.2 and his evidence would prove the contents of Ex.A-6.

11. Heard Sri P. Radhive Reddy, learned counsel

for the petitioner (appellant).

13. Despite service of notice, none appears on behalf of respondent No.1, owner of the tata-sumo. No representation for respondent No.2, insurer.

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

15. When kept in view the description of injuries mentioned in Ex.A-3, even excluding Ex.A-6 disability certificate, certainly it has to be construed that the petitioner sustained grievous injuries that being fracture of left temporal bone, in regard to which PW.2, being medical officer, has asserted the same; the Tribunal merely on the ground that scan report is not filed in to the Court, viewed the injuries mentioned in Ex.A-3 as simple and awarded compensation. Therefore, certainly, the Tribunal appears to have carried away by non-filing of scan report overlooking the description of injuries finding place in Ex.A-3. Therefore, the petitioner is certainly entitled to enhancement of compensation. Hence, a sum of Rs.20,000/- is granted towards injury and pain and suffering for the fracture of left temporal bone. The amount of Rs.3,000/- granted by the Tribunal towards extra-nourishment is enhanced to Rs.5,000/-. Further, an amount of Rs.2,000/- is granted towards transportation charges.

16. Thus, the petitioner is entitled to a total compensation of Rs.27,000/- (Rupees twenty seven thousand only) as against Rs.5,000/- awarded by the Tribunal, and the same is accordingly awarded. However, the rate of interest granted by the Tribunal at 9% per annum is maintained on the amount of Rs.5,000/- granted by the Tribunal, but, on the enhanced amount, interest is granted at 7.5% per annum in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**^[1], from the date of petition till realisation.

17. Accordingly, the Civil Miscellaneous Appeal is allowed modifying the impugned order and enhancing the compensation, as indicated above. 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

February 29, 2016.

PV

^[1] 2013ACJ1403 = 2013(4)ALT35