

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

C.M.A. No.2903 OF 2004

JUDGMENT:

The present appeal is filed by the injured - claim petitioner in M.V.O.P. No.233 of 1995, on the file of the Chairman, Motor Vehicles Accidents Claims Tribunal - cum - II Additional District Judge, Krishna District at Vijayawada (for short 'the Tribunal'), seeking enhancement of compensation on the ground that the amount of Rs.55,685/- awarded as compensation by the order and decree, dated 30-07-1999, for the injuries he sustained was very meager since the claim itself was for Rs.3,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') and he had expended huge amount towards medical expenses.

2. Appellant No.1 herein, who is no more and his death occurred while proceedings in the present appeal have been pending and whose legal representatives have come on record as appellant Nos.2 to 5, by the orders, dated 13-04-2015, in MACMAMP No.903 of 2015, while respondent Nos.1 to 3, who are driver, owner and insurer of Lorry bearing registration No.2644, respectively, are respondent Nos.1 to 3 and respondent Nos.4 and 5, who are driver and owner of Jeep bearing registration No.AAY

6055, are respondent Nos.4 and 5 in MVOP before the Tribunal.

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

4. The fact-situation occurring in the instant case is that on

05-10-1994, the petitioner having attended the meeting at M.D.O.'s office in Ibrahimpatnam, Vijayawada, as he was working as Deputy Executive Engineer in Panchayat Raj Department in Mylavaram then, left for Vijayawada to attend a meeting called by the Collector, Krishna District, in a Jeep bearing registration No.AAY 6055 driven by respondent No.4 belonging to respondent No.5. Having attended the meeting and while he was proceeding on Ibrahimpatnam - Vijayawada road, respondent No.1 drove the lorry bearing registration No.2644 belonging to respondent No.2 and insured with respondent No.3, in a rash and negligent manner and hit the jeep, due to which, the petitioner sustained multiple injuries along with others. In fact, the jeep caught fire and gutted, but, however, they were rescued by the passers-by. He was shifted to Government Hospital along with respondent No.4, who was injured and again he was shifted to Nagarjuna Hospital, Kanuru. While he was undergoing treatment in

hospital, some thieves broke the doors of his house and committed theft of articles worth Rs.60,000/- on 30-10-1994. Thus, laid the claim originally for Rs.3,00,000/- against respondent Nos.1 to 5.

5. Respondent Nos.1, 2, 4 and 5 remained *ex parte* before the Tribunal.

6. Respondent No.3 - Insurer of the offending vehicle alone opposed the claim.

7. During inquiry before the Tribunal, on behalf of the petitioner, besides examining the petitioner as PW.1, one Mudupu Kaniki Reddy and Dr. V. Somanadham, Civil Surgeon and Professor of Orthopaedics were examined as PWs.2 and 3, respectively, and marked Exs.A-1 to A-20 to substantiate his claim. On behalf of respondent No.3 - Insurer, no witnesses were examined and no documents were filed.

8. The Tribunal having recorded a finding in favour of the petitioner on issue No.1 proceeded with determination of compensation on issue No.2. By assigning reasons, the Tribunal has granted Rs.15,000/- towards grievous injury; Rs.8,000/- towards four simple injuries at the rate of Rs.2,000/- each; Rs.22,685/- towards medical expenses; Rs.10,000/- towards extra nourishment, thus, making a total of Rs.55,685/- with

interest at 12% per annum thereon from the date of petition till realization.

9. On the ground that the compensation awarded was very meager, the deceased petitioner preferred the present appeal for grant of balance amount mainly contending in the grounds that the amount covered by Ex.A-6 was not granted and also seeking that the Tribunal ought to have granted Rs.40,000/- towards pain and suffering, and the Tribunal ought to have compensated him in proportionate to the damages he suffered on account of accident and the Tribunal was not right in disallowing the claim made by him when Ex.A-3 coupled with Ex.A-13 and the evidence of petitioner as PW.1 are clinching enough to establish his entitlement to the claim amount.

10. Heard Sri G. Vasantha Rayudu, learned counsel for the appellants - petitioners, and Sri G. Purushotham Rao, learned Standing Counsel for respondent No.3 - Insurance Company. In the cause title of memorandum of grounds of appeal, it is mentioned that respondent Nos.1, 4 and 5 are not necessary parties to the appeal, while the appeal was dismissed for default by orders dated 06-11-2003, against respondent No.2, which is of no

consequence in deciding the controversy herein as he was set *ex parte* before the Tribunal.

11. The learned counsel for the appellants would submit that appellant Nos.2 to 5, though, are the legal representatives of the deceased appellant, still, they are entitled to claim amounts towards medical expenses; enhancement for extra nourishment and other components except the component of pain and suffering. The learned counsel would, in fact, contend that all the appellants are entitled to the entire amount in view of the fact, that the death of the petitioner took place on account of the impact of the injuries he sustained in the accident.

12. The learned counsel for respondent No.3 - Insurance Company, on the other hand, would submit that since original petitioner, who was injured, died during the pendency of the instant appeal, the amount which was already granted by the Tribunal since becomes an asset in the hands of the legal representatives of the deceased petitioner, the legal representatives, who are appellant Nos.2 to 5, are not entitled to any enhancement and, therefore, sought to dismiss the claim petition.

13. The scope is very limited in the instant appeal. So far as the claim towards grant of medical expenses is concerned, it is not forthcoming in the evidence whether the deceased petitioner got reimbursed, as he was in

Government service. Even otherwise, it appears that the Tribunal has granted a sum of Rs.22,685/- towards medical expenses as against the amount of Rs.44,780/- shown in Ex.A-6. Thus, only the difference amount of Rs.22,095/- [i.e. Rs.44,783/- minus Rs.22,685/-] can be granted to the appellants. Thus, the appellants are totally entitled to Rs.77,780/- [Rs.55,685/- + Rs.22,095/-] as compensation.

14. So far as the rate of interest is concerned, the Tribunal has granted at 12% per annum on Rs.55,685/-, the same is maintained. However, keeping in view, of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**^[1], interest at 7.5% per annum is granted on the enhanced amount of Rs.22,095/-.

15. Accordingly, the appeal is allowed in part, and the order and decree, dated 30-07-1999, in M.V.O.P. No.233 of 1995, passed by the Tribunal are modified, enhancing the compensation to Rs.77,780/- (Rupees seventy seven thousand seven hundred and eighty) from Rs.55,685/- with interest at 12% per annum on the amount of Rs.55,685/- granted by the Tribunal and at 7.5% per annum on the enhanced amount of Rs.22,095/-(Rupees twenty two thousand and ninety five) from the date of petition till realization. The awarded amount shall be

apportioned among appellant Nos.2 to 5 equally. No order as to costs.

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

A. SHANKAR NARAYANA, J

July 08, 2016.

Mgr

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