

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

MACMA No. 1558 of 2005

Judgment:

Having not satisfied with the amount of Rs.50,000/- granted by the Tribunal as compensation for the injuries sustained by the petitioner, by the order, dated 09.08.2004, in MVOP No.62 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Kadapa, the petitioner preferred the instant appeal seeking enhancement of compensation on the ground that meagre compensation was granted as against the claim of Rs.2,50,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the Original Petition before the Tribunal.

3. The facts, in brief, are that on 12.11.2001, the petitioner was riding the motor cycle along with two others from Kadapa towards Khajipet and, at about 3.30 PM, when they reached Bala Nagar, a Jeep bearing registration No.AP-04B-7038, coming in opposite direction driven in a rash and negligent manner, hit the motor cycle, due to which, all the three persons sustained injuries. The petitioner states that he was immediately shifted to Government Hospital, Kadapa, where he had undergone treatment and incurred expenditure of Rs.30,000/-. He has totally claimed Rs.2,50,000/- as compensation.

4. Before the Tribunal, the first respondent – owner of the Jeep while opposing the claim, however, pleaded that since the vehicle was insured with the second respondent, the second respondent has to indemnify the claim and, therefore, sought to exonerate him. The second respondent – Insurance Company opposed the claim by filing separate counter raising various pleas.

5. The Tribunal, based on the said pleadings, framed three issues in order to fix the responsibility for the accident.

6. During enquiry, the petitioner examined himself as PW.1 besides examining Dr. B. Someswara Reddy as PW.2 and marked Exs.A1 to A10. On behalf of the respondents no witnesses were examined and no documents were filed.

7. The Tribunal, on issue No.1, having analysed the evidence on record, held it in favour of the petitioner. On issue No.2, basing on the description of injuries finding place in Ex.A2, but, however, discarding the evidence of PW.2 and the disability certificate issued by him under Ex.A7, by assigning cogent reasons, granted a total sum of Rs.50,000/- under all the heads with interest at 9% p.a., from the date of petition till realization.

8. Aggrieved by the same, on the ground that meagre compensation was granted by the Tribunal, the petitioner preferred the instant appeal contending in the grounds that, though, he sustained two fractures and there was malunion, still, the Tribunal has granted meagre sum without appreciating the medical evidence through Ex.A2, disability under Ex.A7 and the evidence of the doctor examined as PW.2, hence, sought to grant the balance amount.

9. Heard Sri K. Murali Krishna, learned counsel for the appellant, and Sri Naresh Byrapaneni, learned counsel for the second respondent – Insurance Company. The first respondent - owner, though, served with notice, none appears for him.

10. Perused the order under challenge and the evidence on record both, oral and documentary, let in by the petitioner. There is no dispute with regard to the manner in which the accident had taken place and also in regard to injuries sustained by the petitioner.

Though the learned counsel for the appellant submits that PW.2 is a Medical Officer and, though, he was not working in the very same hospital on the date of his deposition before the Court, the Tribunal was not right in rejecting Ex.A7 and his evidence, but as seen from the reasons assigned by the Tribunal in rejecting the evidence of PW.2, certainly, the said finding recorded by the Tribunal cannot be upheld.

11. However, as seen from the order, the Tribunal at one stage observed that the petitioner, though, even construed as unskilled labour, would have been earning not less than Rs.1500/- per month and he is entitled to Rs.3,000/- towards loss of earnings, Rs.5,000/- towards transportation charges and Rs.5,000/- towards medicines, but, still, at a later stage, granted Rs.50,000/- as compensation. Even if the disability is not accepted by the Tribunal, the Tribunal ought to have gone to compute the compensation basing on the nature of injuries and inconvenience suffered by the petitioner and under other relevant heads, which, somehow, the Tribunal has not done. So, keeping in view, the description of injuries as finding place in Ex.A2 and malunion of right tibia and fibula at middle $\frac{1}{3}$ rd as evident from the evidence of PW.2 and fracture of right mandible, the petitioner is, certainly, entitled to Rs.20,000/- towards each grievous injury. Besides the same, the petitioner is entitled to a sum of Rs.15,000/- towards pain and suffering and Rs.10,000/- towards extra nourishment. This apart, towards transportation and attendant charges, the petitioner is entitled to Rs.6,000/- towards attendant charges at the rate of Rs.2,000/- per month, as at least three months would take for mobilising himself, and Rs.3,000/- towards transportation charges. Towards temporary loss of earnings, keeping in view, the nature of injuries, the petitioner would not have been able to perform his regular avocation at least for a period of six (6) months to get normalcy. In view of the same, taking note of the fact that at least Rs.1,500/- per month towards temporary loss of earnings, a sum of Rs.9,000/- is granted. Thus, the petitioner is

entitled to a total sum of Rs.83,000/- (Rs.20,000/- + Rs.20,000/- + Rs.15000/- + Rs.10,000/- + Rs.6,000/- + Rs.3,000/- + Rs.9000/-). The rate of interest granted by the Tribunal at 9% p.a., is maintained on the amount of Rs.50,000/- granted by it, but the interest on the enhanced amount is awarded at 7.5% p.a., from the date of petition till realization as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**^[1].

12. Accordingly, the MACMA is partly allowed. There shall be no order as to costs.

13. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal shall stand closed.

A. SHANKAR NARAYANA, J

Date: 19.01.2016
Nsr

^[1] 2013 ACJ 1403 = 2013(4) ALT 35