

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.2654 OF 2005

JUDGMENT:

Feeling dissatisfied with the award of Rs.77,250/- as compensation as against the claim of Rs.1,50,000/- laid under Section 166 of the Motor Vehicles Act, 1988, by order and decree, dated 16.06.2005, in O.P.No.506 of 2004 on the file of the Chairman, Motor Accidents Claims Tribunal – cum – IV Additional District Judge, Warangal, the petitioner/claimant preferred the instant appeal seeking enhancement.

2. The appellant is the petitioner, whereas respondent Nos.1 and 2 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 in brief are that, on 20.12.2003, while the petitioner was returning home from Wardhannapet on his Bajaj Boxer Motor Cycle and when he reached Sri Venkateshwara Swami Temple, KUC Road, Jawahar Colony, Hanamkonda, at about 05:30 AM, a Tractor with Tractor bearing Registration Nos.AP-36-T-1775 and 1776

respectively, driven at high speed in a rash and negligent manner came from behind and dashed the Motor Cycle, due to which he fell down along with one Lingala Sarangam, pillion rider, and sustained injuries. The concerned police registered a case in Crime No.616 of 2003 under Sections 337 and 338 I.P.C. against the driver of the Tractor. The petitioner claiming that though he was treated as inpatient from 20.12.2003 onwards and had spent Rs.30,000/- towards treatment, he was unable to walk long distances and was suffering on account of pain and mental agony, sought Rs.1,50,000/- as compensation.

5. Respondent No.1, owner of the Tractor, remained *ex parte*. Respondent No.2 – Insurer opposed the claim by raising various pleas.

6. Based on the said pleadings, in the direction of accounting for responsibility about the accident, the Tribunal has framed three issues. During enquiry, the petitioner examined himself as PW.1 besides examining Dr. P. Kali Prasad Rao as PW.2 and marked Exs.A1 to A14 to substantiate the claim laid. On behalf of respondent No.2, no witnesses were examined but a copy of the Insurance Policy was marked as Ex.B1 on consent. Respondent No.2 has also sought permission to reserve its right to raise all defences available to the insured and the same was granted by order, dated 03.06.2005, in

I.A.No.506 of 2005.

7. The Tribunal, on appraisal of evidence let in by the petitioner, recorded a finding that due to rash and negligent driving of the driver of the Tractor the accident had occurred and accordingly, held issue No.1 in favour of the petitioner.

8. On issue No.2, though, the petitioner claimed that he was working as Mandal Education Officer and sustained partial permanent disability to the extent of 40% basing on the Disability Certificate issued by the Medical Board and the evidence of PW.2, who is one of the signatories to the said Certificate, the Tribunal has not accepted the said Certificate on the ground that it is a post dated document, as per the observation made by it in paragraph No.21 of the impugned order, and has granted a sum of Rs.25,000/- to the first fracture, Rs.10,000/- to the second fracture, Rs.5,000/- to the third fracture, and Rs.2,000/- each to the two simple injuries besides granting a sum of Rs.30,000/- towards medical expenses, Rs.250/- towards transportation and Rs.3,000/- towards pain and suffering, thus, totalling to a sum of Rs.77,250/- with interest at 7.5% per annum making respondent Nos.1 and 2 jointly and severally liable to pay the said amount.

9. The aforesaid order is under challenge in the instant appeal contending that a meagre compensation

was awarded and the Tribunal without assigning any reason sidelined the permanent disability to the extent of 40% despite positive evidence on record and therefore, sought to grant balance amount of Rs.72,750/-.

10. Heard Sri A. Prabhakar Rao, learned counsel for the appellant. The appellant has endorsed that respondent No.1 – owner of the Tractor is not necessary party. Though respondent No.2 – Insurance Company is served with notice, none appears for it.

11. As seen from the evidence on record, the finding recorded by the Tribunal excluding the Disability Certificate marked as Ex.A8 and the evidence of PW.2 is well reasoned as the claim was laid on 19.05.2004 and the Disability Certificate was obtained on 14.04.2005, which is thus, a post litem document. This apart, the Tribunal has rightly observed that there was only stiffness and the said stiffness would not account for 40% disability as mentioned in Ex.A8.

12. Concerning the injuries sustained by the petitioner, the petitioner has sustained fracture of both the bones of right leg, fracture of 10th rib on right side, closed head injury, contusion on the back and contusion on the left knee. The Tribunal has awarded a sum of Rs.25,000/- towards first injury, which involves fracture of both the bones of lower limb, but as the said injury vitally affects

the mobility for a temporary period, it would be reasonable if it is enhanced to Rs.40,000/-. Concerning the second injury, which is again a fracture of 10th rib on right side, the amount of Rs.10,000/- awarded by the Tribunal is enhanced to Rs.15,000/- keeping in view, the pain the petitioner had suffered. For the third injury, which is closed head injury, the petitioner is entitled to Rs.10,000/- as against Rs.5,000/- granted by the Tribunal. Concerning the two simple injuries, the Tribunal has granted Rs.2,000/- each and the same is enhanced to Rs.3,000/- each. The amount of Rs.30,000/- granted by the Tribunal towards treatment as against Rs.33,500/- mentioned in the bill issued by Hariteja Hospital, Warangal, dated 01.01.2004, certainly, has to be enhanced to Rs.33,500/-, since the Tribunal has not discarded the said bill marked as Ex.A12. The Tribunal has granted Rs.250/- towards transportation. Keeping in view, the injury sustained by the petitioner to the lower limb and other injuries, the same is enhanced to Rs.2,000/-. The amount of Rs.3,000/- granted by the Tribunal towards pain and suffering is on lower side when compared with the sufferance, the petitioner had undergone on account of the fractures and injury to the head and therefore, the same is enhanced to Rs.15,000/-. Further, a sum of Rs.5,000/- is granted towards attendant charges and a sum of Rs.6,000/- at the rate of Rs.2,000/- per month is granted towards loss of temporary income for three months. Thus, the petitioner is

totally entitled to Rs.1,32,500/- with interest at 7.5% per annum.

13. Thus, the instant appeal is partly allowed to the extent indicated above. There shall be no order as to costs.

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

A. SHANKAR

NARAYANA, J

February 03, 2016.

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