

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

MACMA.No.2031 of 2005

JUDGMENT:

The instant appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), seeking enhancement of compensation on the ground that the amount of Rs.18,500/- awarded by the Chairman, Motor Accident Claims Tribunal-cum-IV Additional District Judge (F.T.C), Nizamabad, by the order dated 17.02.2005 in O.P.No.1338 of 2001, as against the claim of Rs.1,50,000/- laid under Section 166 of the Act, is on lower side.

2. The appellant herein is the petitioner, while respondent Nos.1 and 2, who are the owner and the insurer of the auto bearing registration No.AP-25-T-7442, respectively, were respondent Nos.1 and 2, respectively, in the original petition.

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

4. There is no dispute in regard to the fact-situation occurring in the instant case and the manner in which the accident has occurred to the effect that in view of the rash and negligent driving of the auto bearing registration No.AP-

25-T-7442 on 02.05.2001 at about 8.00 p.m., by its driver, it turned upside down resulting in injuries to the petitioner, who was travelling in the auto, and he was treated in the Government Headquarters Hospital, Nizambad, and also in the Private Hospital. According to him, he spent Rs.40,000/- towards medical expenses. Claiming that he was working as an Attender in ZPTC, earning Rs.5,000/- per month and, subsequent to accident, he became disabled having suffered permanent disability, sought a sum of Rs.1,50,000/- as compensation from respondent Nos.1 and 2, who are the owner and insurer of the auto, respectively, though he estimated special and general damages at Rs.10,01,500/-.

5. Respondent No.1-owner of the auto remained *ex parte*. Respondent No.2-Insurance Company opposed the claim by filing a counter affidavit.

6. The Tribunal, having framed three issues, allowed the parties to lead evidence and the petitioner examined himself as P.W.1 and also examined Dr.L.Ramulu as P.W.2 and marked Exs.A1 to A4 and C1 and C2. On behalf of the respondents, R.W.1 was examined and Exs.B1 and B2 were marked.

7. The Tribunal, having found favour with the petitioner so far as issue No.1 is concerned, however, did not agree with the petitioner that he sustained permanent disability by discarding the evidence of P.W.2 and excluding

the Disability Certificate marked as Ex.C1 by referring to the observations made by this Court as regards the conduct of P.W.2 in issuing such certificate and even going to the extent of using outpatient slips of the Government Hospital, by virtue of his having worked as Civil Assistant Surgeon earlier for quite some time. Taking into consideration the description of the injuries shown in Ex.C2, having summoned the same from the Superintendent of Government Headquarters Hospital, Nizamabad, the Tribunal granted a sum of Rs.5,000/- for grievous injury, Rs.1,000/- for simple injury, Rs.5,000/- towards pain and suffering, Rs.3,000/- towards medical expenses and extra nourishment and Rs.2,000/- towards transportation, besides granting Rs.4,500/- towards loss of earnings. Thus, in all, the petitioner was granted a sum of Rs.18,500/-, though arrived at Rs.20,500/-, with interest at 9% per annum from the date of petition till the date of deposit.

8. Aggrieved by the aforesaid order, which is under challenge in the instant appeal, on the ground that a meagre compensation was granted, the instant appeal is preferred by the petitioner contending in the grounds that the Tribunal has not properly appreciated the evidence on record and, without assigning any reason, excluded the Disability Certificate marked as Ex.C1. Hence, sought to grant a total sum of Rs.1,50,000/-.

9. Heard Sri M.Rajamalla Reddy, learned counsel for the appellant-petitioner, and Smt. Pushpinder Kaur, learned counsel representing for Respondent No.2- Insurance Company. None appears for Respondent No.1- owner of the auto.

10. Perused the award and the evidence let in by the parties, both, oral and documentary. The finding recorded by the Tribunal in excluding the evidence of P.W.2 and the Disability Certificate-Ex.C1 issued by him, cannot be upset for the reason that there are number of matters where P.W.2 figured as a Medical Officer giving evidence and issuing disability certificates to prove the same. This Court even made certain observations, which are also extracted in the order under challenge in paragraph 16. Therefore, it is to be seen whether the amounts awarded under various heads by the Tribunal are just and adequate or otherwise.

11. It is not in dispute that the petitioner sustained fracture of right leg and an abrasion on skull 1" x ½" as described in Ex.C2. When kept in view, the fracture sustained by him, the amount of Rs.5,000/- granted by the Tribunal requires enhancement and the same is enhanced to Rs.15,000/-. Towards simple injury, the amount of Rs.1,000/- granted by the Tribunal is enhanced to Rs.3,000/-, as it is an injury to the skull. The amount of Rs.5,000/- granted towards pain and suffering is enhanced

to Rs.10,000/-. The amount of Rs.3,000/- granted towards medical expenses is maintained, so also the amount of Rs.2,000/- granted towards transportation and Rs.4,500/- towards loss of temporary earnings.

12. Thus, the petitioner is entitled to a total sum of Rs.37,500/- (Rupees thirty seven thousand five hundred), as against Rs.18,500/- granted by the Tribunal, towards compensation and the same is, accordingly, granted.

13. So far as the rate of interest is concerned, the Tribunal granted interest at 9% per annum and the same is maintained on the amount of Rs.18,500/- granted by the Tribunal, but on the enhanced amount, interest at 7.5% per annum is granted from the date of petition till realisation as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**^[1].

14. Accordingly, the instant appeal is allowed in part modifying the order passed by the Tribunal, by enhancing the compensation, as indicated above, and confirming the same in all other respects. There shall be no order as to costs.

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

JUSTICE A.SHANKAR

NARAYANA

16.03.2016
v v

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