

**HONOURABLE SRI JUSTICE A. SHANKAR
NARAYANA**

M.A. C.M.A. No.2986 OF 2005

JUDGMENT:

Dissatisfied with the award of Rs.6,000/- towards compensation as against the claim of Rs.1,50,000/- laid under Sections 166(1)(a) and 163-A of the Motor Vehicles Act, 1988 (for short 'the Act'), petitioner preferred this Civil Miscellaneous Appeal against the order and decree, dated 12.08.2005, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - District Judge, Adilabad, in O.P. No.364 of 2002, seeking enhancement of compensation.

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 auto-rickshaw bearing No.AP-1-T-4732 that involved in the accident, are respondent Nos.1 and 2, respectively.

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

4 The facts, in brief, are that on 13.12.2001, while the petitioner viz., kadarapu Pochanna along with three others was proceeding in the auto-rickshaw bearing

No.AP-1-T-4732 from Jainath to Karanji village, near Kapri village, at about 10.30 a.m., since driver of the auto-rickshaw drove it in rash and negligent manner, lost control over it, due to which, the auto-rickshaw turned upside down causing injuries to the petitioner and other inmates of the auto-rickshaw, and, immediately he was shifted to Government Hospital, Adilabad, where he was treated and after discharge, he has taken treatment under a private doctor for two months and incurred medical expenses about Rs.3,000/-, and, thus, sought compensation of Rs.30,000/-, but, later by way of amendment, it was enhanced to Rs.1,50,000/-.

5. Respondent No.1, owner of the auto-rickshaw involved in the accident, remained *ex parte* before the Tribunal.

6. Respondent No.2, insurer of the auto-rickshaw involved in the accident, opposed the claim stating that the auto-rickshaw was carrying the passengers more than the capacity and since there were ten (10) passengers, it amounted to violation of insurance policy terms and conditions; however, admitted that the auto-rickshaw was insured with it.

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

8. During enquiry, petitioner examined himself as PW.1 besides examining Dr. Tippe Swamy Naik, who treated him, as PW.2 and marked Exs.A-1 to A-4. On behalf of the insurer, no witnesses were examined, but a copy of the charge sheet was marked as Ex.B-1 on consent, which was not exhibited by the petitioner.

9. The Tribunal, on appraisal of evidence on record, held issue No.1 in favour of the petitioner. On issue No.2, having found that Ex.A-2, copy of injury certificate, discloses that the petitioner was admitted in the hospital on 13.12.2001 and discharged on 22.01.2002 and it would reflect that the petitioner sustained only simple injuries i.e., two (2) lacerations and four (4) abrasions excluded Ex.A-3 disability certificate, which shows 40% disability in view of traumatic sequela of left knee, and, having found that the petitioner sustained six (6) simple injuries, at Rs.1,000/- each, awarded a total sum of Rs.6,000/- towards compensation with interest at 7.5% per annum placing reliance on the decision of the Hon'ble Supreme Court in

New India Assurance Company Limited v. Charlie and another (2005 ACJ 1131).

10. It is the aforesaid order, which is under challenge in the instant appeal on the ground that meagre compensation was granted by the Tribunal and sought to

grant balance amount contending that the Tribunal excluded the evidence of PW.2 and Ex.A-3, without assigning any reasons, and, therefore, the Tribunal was not right in not considering the disability at 40% though, PW.2 has spoken to that effect.

11. Heard Sri S. Surender Reddy, learned counsel for the petitioner (appellant) , and Sri Naresh Byrapaneni, learned counsel for the insurer.

12. Despite service of notice, none appears for respondent No.1, owner of the auto-rickshaw involved in the accident.

13. Perused the order under challenge and the evidence on record.

14. The very fact that originally the claim was laid for Rs.30,000/- would reflect that the petitioner sustained simple injuries and that was the reason to seek Rs.30,000/-. Later he amended the claim seeking Rs.1,50,000/- having obtained Ex.A-3 disability certificate issued by PW.2. It is clear from Ex.A-2 contents that all the injuries sustained by the petitioner are simple in nature.__

15. PW.2 was examined in an attempt to prove the disability said to have sustained by the petitioner as he issued the disability certificate, but, his evidence is not

convincing enough to show that the petitioner did really sustain fractures or any injury which really did disable him permanently. Further, disability certificate ought to have been obtained from the Medical Board constituted for the said purpose and, therefore, the finding recorded by the Tribunal in excluding the evidence of PW.2 and Ex.A-3 cannot be faulted with.

16. However, keeping in view, that the petitioner sustained six (6) injuries, which are simple in nature, and was treated as inpatient from 13.12.2001 to 22.01.2002, at Rs.3,000/- per injury, a sum of Rs.18,000/- (Rs.3,000/- x 6) is granted. For the pain and suffering he has undergone during treatment period as inpatient and other incidental expenses, a sum of Rs.12,000/- is granted.

17. Thus, the petitioner is entitled to a total compensation of Rs.30,000/- (Rupees thirty thousand only) as against Rs.6,000/- awarded by the Tribunal, and the same is accordingly awarded.

The interest granted by the Tribunal on the compensation at 7.5% per annum from the date of petition till realisation is maintained even on the enhanced compensation in view of the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**^[1].

18. Accordingly, the Civil Miscellaneous Appeal is

allowed in part 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 26, 2016.

PV

[\[1\]](#) 2013ACJ1403 = 2013(4)ALT35