

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1260 OF 2005

JUDGMENT:

Having got dissatisfied with the award of Rs.1,54,911/- as compensation by the order dated 29.03.2005 in M.V.O.P. No.503 of 1999 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge, Guntur (for short, 'the Tribunal') as against the claim of Rs.6,00,000/- laid under Section 163-A of the Motor Vehicles Act, 1988 (for short, 'the Act') for the injuries sustained by the appellant-petitioner, who is minor represented by his next friend and father, in a road accident, the instant appeal is preferred under Section 173 of the Act seeking enhancement of compensation.

2. The appellant herein is the petitioner, while respondent Nos.1 and 2 herein, who are the owner and insurer of the jeep bearing registration No.APL 2003, are respondent Nos.1 and 2, respectively, in the original petition.

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

4. The facts in brief are that on 11.04.1999 at about 2-00 p.m., while the petitioner, who was aged 10

years on the date of accident, was standing by the side of Karlapalem-Bapatla road, near Peddinti Amma Temple in Karlapalem village with his father, a jeep bearing registration No.APL 2003, driven by its driver in a rash and negligent manner at high speed, came and dashed the petitioner, due to which, he fell down and left tyres of the jeep ran over the abdomen of the petitioner, as a result of which, both the kidneys were damaged and affected. During the treatment, one of the kidneys was removed, a part of liver was removed and his spleen was removed and his condition was critical for some time, while he was being treated in Hitech Trauma and Critical Care Hospital, Arundalpet, Guntur from 12.04.1999 to 30.04.1999 and spent Rs.1,00,000/- towards medical expenses. Therefore, through his father and his next friend, he filed the claim petition against respondent Nos.1 and 2, who are the owner and insurer of the jeep respectively.

5. Respondent No.1, who is the owner of the accident vehicle, filed separate counter. While denying negligence attributed to his driver, pleaded that the vehicle was insured with respondent No.2 and, therefore, to order respondent No.2 to pay compensation, in case the Tribunal arrives at the conclusion that the petitioner is entitled to compensation as respondent No.2 was under the obligation to indemnify him. Respondent No.2-insurer opposed the claim by raising various pleas, which are

unnecessary to advert to in view of the fact that the instant appeal is preferred by the petitioner seeking enhancement.

6. Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry, the petitioner besides examining himself as P.W.1, examined his next friend and father as P.W.2 and two doctors as P.Ws.3 and 4, besides marking Exs.A.1 to A.6 to substantiate his claim; whereas, on behalf of respondent Nos.1 and 2, no witnesses were examined and no documents were filed.

7. On appraisal of the evidence on record, both, oral and documentary, let in by the petitioner, the Tribunal held issue No.1 in favour of the petitioner; and on issue No.2, having considered that the petitioner was 10 years old on the date of the accident and the evidence of P.W.3 showing that the spleen of P.W.1 was removed and so also the right kidney, as they were damaged beyond rectification and even part of liver was also removed and the petitioner sustained five injuries and out of them, fifth injury, i.e., hemoperitoneum and hepatic and renal and splenic haemotoma, is grievous in nature and, on account of loss of kidney and spleen, besides damage to the liver, he suffered 35% disability and also suffered mental pain throughout. Even the other doctor, who was examined as P.W.4, asserts that disability would be between 40% and

45% as could be gathered from Exs.A.4 and A.6 and the relevant documents have also been filed, which are marked as Exs.A.3 to A.6 and, thus, P.W.4 would opine that the petitioner sustained 45% disability. The Tribunal has taken notional income as Rs.15,000/- per annum, as the petitioner was not an earning member and was studying third class as on the date of the accident, and applying multiplier '16' and assessing 40% disability, arrived at Rs.96,000/- ($\text{Rs.15,000/-} \times 40\% \times 16$) towards partial permanent disability. Besides the same, the Tribunal has also granted Rs.5,000/- towards pain and suffering and Rs.53,911/- towards medical expenses, making a total sum of Rs.1,54,911/- and granted the same as compensation with interest at 9% per annum from the date of petition till realization.

8. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the Tribunal has not properly appreciated the evidence on record, more particularly, the doctors examined as P.Ws.3 and 4 and somehow, overlooked the fact that the petitioner had suffered loss of kidneys and part of liver on account of accident, with which he has to suffer throughout rest of the life, which fact was not considered by the Tribunal and, thereby, sought to grant the balance amount.

9. Heard Sri N. Subba Rao, learned counsel for

the appellant-petitioner. Respondent No.1, though not served, still, however, his absence would make no difference, since he has also suffered decree as the Tribunal fastened joint and several liability to pay the compensation determined. Despite service of notice on respondent No.2-Insurance Company, none appears. It appears that respondent No.2-Insurance Company is not interested in defending its claim.

10. In the direction of substantiating the stand taken by the petitioner (appellant), learned counsel for the petitioner has placed reliance on the judgment of the Hon'ble Supreme Court in **Ibrahim v. Raju and others**^[1]. The fact-situation therein would reveal that the petitioner sustained eight grievous injuries and the fracture of pelvis being one of them was the vital injury affecting his future who was 18 years old on the date of accident and the medical evidence was to the effect that the injured therein had to undertake lifelong treatment for recurrence of urethral strictures and consequential dysfunction due to fracture of pelvis and, thereby, awarded Rs.2,00,000/- as the injured therein had to suffer as he lost opportunities for making a career in future and the prospects of his marriage were extremely damaged and enhanced the compensation of Rs.1,89,440/- to Rs.6,00,000/-. The second decision relied on by him is **Tamil Nadu State Transport Corporation Division II v.**

S. Jeevanandham^[2], a Single Judge of Madras High Court has enhanced the compensation of Rs.4,03,942/- to Rs.6,12,942/- by modification as during the accident the reproductive organs of the injured therein were shrunk in size and the injured was deprived of his successful relationship with his life. The third decision relied on by him is in **Rajendra v. Bishamber Nath and others**^[3], wherein 3-Judges Bench of the Hon'ble Supreme Court has enhanced the compensation to Rs.1,00,000/- from Rs.48,000/- granted by the High Court as against Rs.24,000/- determined by the Tribunal, where the injured lost one kidney, which was removed and suffered serious injuries. However, keeping in view, that the petitioner herein not only suffered loss of one kidney, but even the spleen, which plays a vital role in immunity system, was removed and a part of liver was also removed, which was crushed during the accident. Though, it is no doubt true that the liver can restructure itself and become normal within no time, however, loss of spleen as well as one of the kidneys would have greater impact on the petitioner building up his career. Hence, the petitioner is entitled to the total sum of Rs.3,00,000/- on all counts keeping in view various factors touching the prospects he lost throughout rest of his life.

11. Thus, the petitioner is entitled to a total sum of Rs.3,00,000/- (Rupees three lakhs) as against

Rs.1,54,911/- granted by the Tribunal towards compensation and the same is accordingly granted. So far as the rate of interest is concerned, the Tribunal granted the same at 9% per annum and the same is maintained on the amount granted by the Tribunal and interest at 7.5% per annum is granted on the enhanced compensation in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**^[4].

12. Accordingly, the instant appeal is allowed modifying the order passed by the Tribunal, by enhancing the compensation, as indicated above. There shall be no order as to costs.

13. As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, stand closed.

A. SHANKAR NARAYANA, J

13th April, 2016

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^[1] (2011) 10 SCC 634

^[2] Laws (Mad)-2010-2-218

^[3] (1998) 8 SCC 359

^[4] 2013 ACJ 1403