

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1456 OF 2005

JUDGMENT:

Having got dissatisfied with the award of Rs.10,000/- as compensation by the order dated 24.09.2004 in O.P. No.374 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Warangal (for short, 'the Tribunal') as against the claim of Rs.1,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') for the injuries sustained by the appellant-petitioner 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 owner and insurer of the auto rickshaw bearing registration No.AP 36V 5626, 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 12.12.2002, when the petitioner along with some others were boarded an auto bearing registration No.AP 36V 5626 to go to Ghanpur Station from Samudrala village and when they

reached outskirts of Ghanpur, since the driver of the auto rickshaw drove it in a rash and negligent manner at high speed, it turned upside down, due to which, the petitioner received fracture to his left clavicle, dislocation of left shoulder, left leg and other grievous injuries to her person and was treated in Satya Hospital for six days and was advised bed rest. The petitioner, claiming that she spent Rs.25,000/- towards medical expenditure and suffered from disability, sought a sum of Rs.1,00,000/- as compensation from respondent Nos.1 and 2, who are owner and insurer of the auto rickshaw.

5. Respondent No.1-owner remained *ex parte*. Respondent No.2-insurer opposed the claim by raising various pleas.

6. Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry, the petitioner examined herself as P.W.1 besides marking Exs.A.1 to A.9 to substantiate her claim; whereas, on behalf of respondent No.2-Insurance Company, no witnesses were examined and no documents were filed.

7. On appraisal of evidence on record, the Tribunal held on issue No.1 in favour of the petitioner; and on issue No.2, observing that the petitioner has not examined the doctor and has not produced any X-ray

report and disbelieving the evidence of P.W.1, granted a sum of Rs.10,000/- as compensation on all counts.

8. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that despite the petitioner sustaining grievous injuries, suffered lot of mental agony and incurred huge expenditure for treatment, granted a meager amount as compensation, and, therefore, sought to grant the balance amount.

9. Heard Sri A. Prabhakar Rao, learned counsel for the appellant-petitioner, and Sri R. Venkat Rao, learned Standing Counsel for respondent No.2-Insurance Company. It is endorsed in the cause title of grounds of appeal that respondent No.1-owner is not a necessary party to the instant appeal.

10. Perused the order and the evidence on record, both, oral and documentary, let in by the petitioner. Learned counsel for the petitioner, though, submits that the petitioner was treated in Satya Hospital, Warangal, and Ex.A.2-medical certificate was signed by the doctor from a private hospital at Warangal, but as rightly observed by the Tribunal that the petitioner was initially treated in M.G.M. Hospital, in regard to which no record, at all, was filed. Therefore, it is a case where the matter requires to be remitted for examination of Medical Officer and also to cause production of medical report, if

available concerning the treatment of the petitioner in M.G.M. Hospital.

11. Accordingly, the instant appeal is allowed setting aside the order and decree passed by the Tribunal, by remitting the matter to the Tribunal with a direction to dispose of the same within a period of six (6) months from the date of receipt of a copy of this order. Both parties are at liberty to lead further evidence before the Tribunal. The amount deposited and withdrawn by the petitioner, if any, is subject to the final order to be passed by the Tribunal. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

12th April, 2016

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