

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1073 OF 2009

JUDGMENT:

Having got dissatisfied with the award of Rs.29,000/- as compensation by the order dated 30.12.2008 in O.P. No.1134 of 2005 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-V Additional District Judge (Fast Track Court), Nizamabad (for short, 'the Tribunal') as against the claim of Rs.4,00,000/- laid under Section 166(1)(a) of the Motor Vehicles Act, 1988 (for short, 'the Act') read with the Rules framed thereunder, 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 the owner and insurer of the auto-rickshaw bearing registration No.AP 25V 0081, 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 would show that on 17.11.2005, while the petitioner was proceeding on his motorcycle bearing registration No.AP 25L 2763 at about 2-30 p.m., and reached Puranipet village limits, an auto-rickshaw bearing registration No.AP 25V 0081, driven

in a rash and negligent manner at high speed coming in opposite direction, dashed the motorcycle, due to which, he fell down and sustained grievous injuries and he was immediately shifted to Amrutha Laxmi Multi Speciality Hospital, Khaleelwadi, Nizamabad and he spent Rs.80,000/- towards medical expenses. The petitioner, claiming that he was working as a telephone and cell phone repairer earning Rs.6,000/- per month and contributing the same to the family, sought the aforesaid amount towards compensation.

5. Respondent Nos.1 and 2 have contested the claim by filing the respective counters, ultimately, seeking dismissal of the claim petition against them.

6. Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry, the petitioner examined himself as P.W.1 besides examining the doctor as P.W.2 and marked Exs.A.1 to A.13; whereas on behalf of the respondents, no witnesses were examined, but a copy of insurance policy was marked as Ex.B.1 on consent.

7. The Tribunal found all the three issues in favour of the petitioner and granted Rs.15,000/- towards grievous injuries numbering three, Rs.2,000/- towards one simple injury, Rs.2,000/- towards pain and suffering and extra nourishment and Rs.10,000/- towards treatment charges, making a total of Rs.29,000/-.

8. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the Tribunal has not properly considered the injuries sustained by the petitioner, which were fracture of first metatarsal bone, fracture of great toe, fracture of second toe, fracture of right collar bone and other fractures indicated in the grounds of appeal and, therefore, sought to grant the balance amount.

9. Heard Sri Y.S.Yellanand Gupta, learned counsel for the appellant-petitioner. No representation for respondent No.2-Insurance Company, though, the matter is kept pending till 3-45 p.m. Though, respondent No.1 was not served with notice, the issue in this case can be adjudicated upon in his absence, as he suffered decree passed by the Tribunal being the owner of accident vehicle.

10. As could be seen from the evidence of P.W.2 and the contents of Exs.A.3 and A.5, the petitioner sustained fracture injuries to second, third and fourth toes, besides lacerated wound and he has undergone treatment in Amrutha Laxmi Multi Specialty Hospital, Khaleelwadi, Nizamabad, having undergone surgical intervention being an inpatient from 17.11.2005 to 26.11.2005. When looked at the amount of Rs.15,000/- awarded by the Tribunal for three grievous injuries, the same appears to be on lower side, though, they are fractures of toes, which would have caused some sort of inconvenience. In that view of the matter, the same is enhanced to Rs.45,000/- for the three grievous injuries. The amount of Rs.2,000/-

granted by the Tribunal for one simple injury is enhanced to Rs.3,000/-. Towards pain and suffering and extra nourishment, the Tribunal granted Rs.2,000/-, as against which, an amount of Rs.10,000/- would be reasonable and, accordingly, granted. The treatment charges granted by the Tribunal at Rs.10,000/- is maintained for the reason that the Tribunal has made a specific observation that the medical bills filed by the petitioner do not tally with the prescriptions.

11. Thus, the petitioner is entitled to a total sum of Rs.68,000/- (Rupees sixty eight thousand) as against Rs.29,000/- 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 7.5% per annum and the same is maintained on the entire amount of compensation in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**¹.

12. 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.

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

A. SHANKAR NARAYANA, J

17th August, 2016
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¹ 2013 ACJ 1403