

**HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

**M.A.C.M.A. No.1633 OF 2005**

**JUDGMENT:**

Having got dissatisfied with the amount of Rs.65,000/- granted as compensation by the order dated 21.01.2004 in M.V.O.P. No.567 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, Warangal (for short, 'the Tribunal') as against the claim of Rs.2,00,000/- 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 to 3 herein, who are the owner and insurers of jeep bearing registration No.AP 36H 485, respectively, are respondent Nos.1 to 3, 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 17.10.2001, the petitioner was driving an auto bearing registration No.AP 13V 6444, when it reached Nirmala Sun Pipe Company towards Hasanparthy, a jeep bearing registration No.AP

36H 485 driven by its driver in a rash and negligent manner came and dashed against the auto, due to which, the petitioner himself sustained fracture to right patella, right clavicle bone, right distal end of radius and crush injuries and he was immediately shifted to M.G.M. Hospital, where he underwent surgical intervention and treated there, from 17.10.2001 to 08.11.2001. Claiming that he spent Rs.45,000/- towards treatment, sought a sum of Rs.2,00,000/- as compensation from respondent Nos.1 to 3.

5. Respondent No.1 remained *ex parte*. Respondent Nos.2 and 3, who are Head Office and Branch Office of the Insurance Company, filed counter raising various pleas.

6. Basing on the said pleadings, the Tribunal framed the following three issues:

"(1) Whether the accident is due to rash and negligent driving of the driver of the vehicle?

(2) Whether the petitioner sustained any injuries and disability and is entitled to claim compensation, if so to what amount and from whom?

(3) To what relief?"

7. During enquiry, the petitioner examined himself as P.W.1 besides examining Dr. P.Kali Prasad

Rao as P.W.2 and marked Exs.A.1 to A.12 to substantiate his claim; whereas, on behalf of respondent Nos.2 and 3, no witnesses were examined and no documents were filed.

8. The Tribunal, on analyzing the evidence let in by the petitioner, held issue No.1 in favour of the petitioner. On issue No.2, the Tribunal taking into consideration the evidence of P.W.2 and Ex.A.12, which contains the nature of injuries sustained by the petitioner, but however, towards disability not taken into account the disability certificate, as such, still, granting Rs.15,000/- towards inconvenience and treating the three fractures as simple injuries, awarded a sum of Rs.40,000/-, besides granting Rs.10,000/- towards medical expenses, and, thus, granted a total sum of Rs.65,000/- with interest at 9% per annum from the date of petition till realization.

9. 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 medical evidence of P.W.2 and Exs.A.9 and A.12 and the petitioner being the driver, due to the injury, he sustained 100% disability, and, therefore, sought to grant the balance amount.

10. Heard Sri K. Venumadhav, learned counsel for the appellant-petitioner, and Smt. M. Bhaskara

Lakshmi, learned Standing Counsel for respondent Nos.2 and 3. None appears for respondent No.1-owner, despite service of notice.

11. Perused the order and the evidence on record, both, oral and documentary, let in by the petitioner.

The finding recorded by the Tribunal in not taking into consideration the percentage of disability mentioned in Ex.A.9, despite the evidence of P.W.2, since based on appreciation of evidence, does not warrant any interference, as it is well reasoned. However, granting of Rs.15,000/- towards inconvenience suffered by the petitioner is maintained. So far as the injuries are concerned, admittedly, the Tribunal has accepted the description of injuries, as mentioned in Ex.A.12, which are, fracture of distal, fracture of patella and fracture of right clavicle, and considered them as simple fractures. As such, Rs.20,000/- towards each injury is granted. Hence, the amount of Rs.40,000/- for three grievous injuries granted by the Tribunal is on lower side and, therefore, enhanced to Rs.60,000/-. So far as the medical expenses is concerned, the Tribunal granted Rs.10,000/- and the same is maintained. The Tribunal has not granted any amount towards extra nourishment. Therefore, a sum of Rs.10,000/- is granted under the said head. Towards attendant charges, as the Tribunal has not granted any amount, a sum of Rs.6,000/- is granted, since the

petitioner would have required assistance for atleast three months. Towards transport charges, a sum of Rs.3,000/- is granted. Towards loss of temporary earnings, no amount is granted by the Tribunal. Even keeping in view, the petitioner was earning Rs.2,000/- per month, at the same rate for six months, a sum of Rs.12,000/- is granted.

12. Thus, the petitioner is entitled to a total sum of Rs.1,16,000/- (Rupees one lakh and sixteen thousand) as against Rs.65,000/- 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 9% per annum and the same is maintained on the amount granted by the Tribunal, but on the enhanced amount, rate of interest at 7.5% per annum, from the date of petition till realization, is granted in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**<sup>[1]</sup>.

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

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

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**A. SHANKAR NARAYANA, J**

25<sup>th</sup> January, 2016

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[\[1\]](#) 2013 ACJ 1403