

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1455 OF 2005

JUDGMENT:

Having got dissatisfied with the amount of Rs.43,250/- granted as compensation by the order dated 14.07.2001 in O.P. No.1865 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-Special Judge for Trial of cases under E.C.Act-cum-III Additional Metropolitan Sessions Judge-cum-XVII Additional Chief Judge, Hyderabad (for short, 'the Tribunal') as against the claim of Rs.1,50,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), for the injuries sustained by the appellant 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 auto rickshaw bearing registration No.AP 28U 5162, respectively, 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 10.05.2001, the petitioner along with one Jangareddy was travelling from

Gudur village to Kosigi village on their scooter and when they reached Kulkacherla X Road on Pargi-Nancherla road, an auto rickshaw bearing registration No.AP 28U 5162 came from behind and dashed their scooter, due to which, the petitioner who was riding pillion fell down and sustained fracture injuries and both bones of his left leg were fractured. He claims that he is an agriculturist earning Rs.2,000/- per month and maintaining his family and on account of injuries, he had to undergo surgery in NIMS Hospital and he spent Rs.60,000/- towards medical expenses and he was also bedridden for some time and advised bed rest for two more months. Thus, claimed a sum of Rs.1,50,000/-.

5. Respondent No.1-owner of the accident vehicle filed counter resisting the claim refuting the negligence attributed to the driver. Respondent No.2-insurer opposed the claim by raising various pleas.

6. Basing on the said pleadings, the Tribunal framed the following issues about the responsibility for the accident:

- "1. Whether the accident in question took place on 10-5-2001 at about 3-00 p.m. due to rash and negligent driving of Auto-Rickshaw bearing no.AP 28U 5162, by its driver ?
2. Whether the petitioner is entitled to the 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 marking Exs.A.1 to A.8 to substantiate his claim; whereas, on behalf of the respondents, no witnesses were examined, but a copy of insurance policy of the accident vehicle was marked as Ex.B.1 on consent.

8. The Tribunal, on analyzing the evidence let in by the petitioner, held issue No.1 in favour of the petitioner finding that due to rash and negligent driving of the driver of the auto rickshaw, the accident had occurred; and on issue No.2, touching determination of compensation, taking into consideration the circumstance that the petitioner had undergone treatment in NIMS Hospital, granted Rs.30,000/- towards medical expenses, Rs.1,000/- towards transport charges, Rs.1,000/- towards attendant charges and Rs.7,500/- towards pain and suffering, besides granting Rs.3,750/- towards loss of income for three months. Thus, a total sum of Rs.43,250/- was granted with interest at 9% per annum.

9. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the Tribunal did not properly appreciate the evidence on record. It is stated that the petitioner was hospitalized

for more than three months by spending huge amount and he is an agriculturist earning Rs.2,500/- per month, which was not considered by the Tribunal. It is also according to him, no amounts were awarded under some heads, such as, extra nourishment, and, therefore, he sought enhancement of compensation.

10. Heard Sri Molugu Krishna Reddy, learned counsel for the appellant-petitioner, and Sri G.Vasanth Rayudu, learned counsel for respondent No.2-Insurance Company. Despite service of notice on respondent No.1, none appears for him.

11. Admittedly, the order was not challenged either by the owner or the insurer. As seen from the evidence on record and the order passed by the Tribunal, *ex facie*, it can be said that the amount of Rs.43,250/- awarded by the Tribunal towards compensation under various heads including medical expenses and general damages is on lower side. The evidence of P.W.1 as well as the observations made by the Tribunal would show that initially, he was referred to Pargi Hospital immediately after the accident that took place on 10.05.2001 and later he was admitted in NIMS Hospital on 03.07.2001 and discharged on 20.07.2001. The same is evident from the bills issued by NIMS Hospital. The petitioner also filed certain documents relating to the treatment he had undergone in Nikhil Multi Speciality Hospital. The Tribunal

disbelieved the same on the ground that none of the persons connected with the said documents was examined. However, the very fact that he was treated in NIMS Hospital in the month of July, though, the accident had taken place in the month of May, is sufficient enough to infer that he had undergone treatment in Nikhil Multi Speciality Hospital. Even by seeing the nature of injuries, it cannot be said that the petitioner sustained an injury, which is not serious. The very fact his both bones of left leg were fractured and had undergone surgical interventions would reflect the sufferance he had undergone. Even outpatient tickets filed by the petitioner would show that from the month of March, 2004, he had undergone treatment in NIMS Hospital for review. Thus, when kept in view, the medical expenses, pain and suffering and his temporary disability suffered by him in attending to his regular avocation by attaining normalcy, certainly, he is entitled to enhancement of the amount granted by the Tribunal. Therefore, towards medical expenses, a sum of Rs.45,000/- is granted as against Rs.30,000/- granted by the Tribunal, as the Tribunal has not taken into consideration the bills submitted by the petitioner towards treatment since they were issued from Nikhil Hospital. Towards pain and suffering, the Tribunal granted Rs.7,500/-, which is far below by any stretch of imagination. Therefore, the same is enhanced to Rs.25,000/- including the injury as such. Towards extra

nourishment, the Tribunal has not granted any amount. Keeping in view, the nature of injuries sustained by the petitioner, a sum of Rs.10,000/- is granted under the said head. Towards transport charges, the Tribunal granted Rs.1,000/- only, though, the injury was to his one of the lower limbs. Therefore, the same is enhanced to Rs.3,000/-. Towards attendant charges also, the Tribunal granted Rs.1,000/- and the same is enhanced to Rs.5,000/-. Towards temporary loss of earnings, the Tribunal has taken Rs.15,000/- per annum as notional income, which is shown in the Second Schedule of Section 163-A of the Act and granted only Rs.3,750/-. Taking into consideration that the petitioner was earning Rs.2,000/-, as contended by him, for a period of six months, a sum of Rs.12,000/- is granted.

12. Thus, the petitioner is entitled to a total sum of Rs.1,00,000/- (Rupees one lakh) as against Rs.43,250/- 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, interest at 7.5% per annum is granted in view of the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**^[1].

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.

A. SHANKAR NARAYANA, J

7th January, 2016

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