

HON'BLE SRI JUSTICE A. SHANKAR

NARAYANA

M.A.C.M.A. No.2629 OF 2005

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JUDGMENT:

Having dissatisfied with the award of Rs.35,000/- as compensation, by the order and decree, dated 22-03-2004, in O.P. No.99 of 2001, passed by the learned Chairman, Motor Accident Claims Tribunal - cum - District Judge, Karimnagar (for short 'the Tribunal') as against the claim of Rs.3,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), the instant appeal is preferred seeking enhancement.

2. Appellant herein is the petitioner in O.P. before the Tribunal, while respondent Nos.1 to 3, who are rider, owner and insurer of Hero Honda motor cycle bearing registration No.AP 15F 1749, respectively, are respondent Nos.1 to 3, respectively.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the O.P. before the Tribunal.

4. The facts would reveal that on 06-05-1998, the petitioner was returning to his village on his motor cycle and on the way near Ramadugu cross roads he picked up his villager, by name,

E. Venkatram Reddy and proceeding towards his village and when they were at a distance of one kilometer from Ramadugu cross roads, respondent No.1 coming from opposite direction on another motor cycle bearing registration No.AP 15F 1749 in a rash and negligent driving, hit their motor cycle, due to which, they fell down and received injuries. The Station House Officer, Ramadugu Police Station also registered a case in crime No.33 of 1998 for the offence punishable under Section 338 IPC. Thus, the petitioner originally claimed Rs.1,00,000/- and then amended it to Rs.3,00,000/- as compensation against respondents.

5. Respondent No.1 filed counter, which was adopted by respondent No.2, owner of the motor cycle, disputing the negligent driving attributed to him and the manner in which the accident had taken place, as alleged by the petitioner. According to him, though, he lodged a complaint with police; they refused to register the same. It is his case that the petitioner neither sustained any fractures, nor spent amounts towards medicines.

6. Respondent No.3 filed its counter opposing the claim by raising various pleas.

7. Based on the pleadings, the Tribunal framed three issues in the direction of fixing responsibility about

the accident.

8. During inquiry before the Tribunal, the petitioner besides examining himself as PW.1, has examined one E. Venkatram Reddy and Dr. D. Narsimulu, as PWs.2 and 3, respectively, and exhibited Exs.A-1 to A-11. On behalf of the respondents, no witnesses were examined, but a copy of insurance policy was marked as Ex.B-1 on consent.

9. On issue No.1, the Tribunal recorded a finding against respondent No.1 and in favour of the petitioner; and on issue No.2, holding that the evidence of PW.3 is very unnatural, excluded the same by assigning reasons and the disability certificate issued by him and granted Rs.15,000/- towards pain and suffering; Rs.15,000/- towards medicines and treatment; and Rs.5,000/- towards extra nourishment, transport and other miscellaneous expenses, thus, making a total of Rs.35,000/- as compensation with interest at 9% per annum thereon.

10. It is the aforesaid order which is under challenge in the instant appeal preferred by the petitioner contending in the grounds that the Tribunal ought not to have excluded the evidence of PW.3 and the disability certificate issued by him, and in fact, he has filed X-ray films (22) in number marked as Ex.A-11, which clearly

indicate the duration of treatment and the amounts spent by the petitioner and, therefore, sought to grant balance amount.

11. Heard Sri N. Subba Rao, learned counsel for the appellant - petitioner. No representation for respondent No.3 – Insurance Company. Despite service of notice on respondent Nos.1 and 2, none appears for either of them.

12. Perused the order and the material on record, both, oral and documentary, let in by the parties.

13. The finding recorded by the Tribunal in excluding the evidence of PW.3 is based on convincing reasons and the same does not warrant any interference. However, as seen from Ex.A-3, medical certificate, the petitioner sustained two grievous injuries. Thus, it is clear, that the petitioner sustained fracture of both bones of right leg and crush injury to the right little finger. The amounts covered by the medical bills were not referred to in the order while discussing elaborately by the Tribunal, though, he got treated in Yashoda Hospital as per Ex.A-5, Out-patient Card. Merely basing on the fact that the petitioner has not pleaded that he was taken treatment in Yashoda Hospital, the same was declined and, therefore, towards medical expenses, the petitioner is entitled to Rs.81,568 rounding it off to Rs.81,600/- and, accordingly, the same is

granted. Since the petitioner sustained fracture of both bones of right leg; so far as the first injury is concerned, he is entitled to Rs.40,000/- towards injury as well as pain and suffering. For the second injury, he is entitled to Rs.15,000/-. Besides the same, the petitioner is entitled to Rs.10,000/- towards extra nourishment, Rs.5,000/- towards attendant charges, Rs.2,000/- towards transport charges. Towards temporary loss of earnings, a sum of Rs.12,000/- is granted at the rate of Rs.2,000/- per month for six months. Thus, in all, the petitioner is entitled to Rs.1,65,600/-.

14. Concerning rate of interest, the Tribunal has granted the same at 9% per annum and the same is not disturbed on the amount awarded by the Tribunal. However, on the enhanced amount of Rs.1,30,600/-, interest is granted at the rate of 7.5% per annum from the date of petition till realization in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**^[1].

15. In the result, the appeal is allowed in part, and the order and decree, dated 22-03-2004, in O.P. No.99 of 2001, passed by the Tribunal, are modified, enhancing the compensation to Rs.1,65,600/- (Rupees one lakh sixty five thousand and six hundred) from Rs.35,000/- against respondents with interest at the rate of 9% per annum on

the amount of Rs.35,000/- granted by the Tribunal and at the rate of 7.5% per annum on the enhanced amount of Rs.1,30,600/-(Rupees one lakh thirty thousand and six hundred) from the date of petition till realization. There shall be no order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA J.

March 18, 2016.

Mgr

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