

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1697 OF 2009

JUDGMENT:

Having got dissatisfied with the award of Rs.12,000/- with interest at 9% per annum as compensation by the order dated 19.08.2004 in M.V.O.P. No.263 of 1999 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Chittoor (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 and also to set aside the finding of the Tribunal that the driver of the two-wheeler, on which the appellant-petitioner was riding pillion, contributed to the accident to the extent of 25% and deduction of the compensation amount arrived at by the Tribunal by applying 25% thereof.

2. The appellant herein is the petitioner, while respondent Nos.1 and 2 herein, who are the owner and insurer of the car bearing registration No.CAO 7662, 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 this case are not in dispute including the manner in which the accident did take place.

5. Heard Sri T.C.Krishna, learned counsel for the appellant-petitioner, and Sri R.K.Suri, learned Standing Counsel for respondent No.2-Insurance Company. Though, service was completed on respondent No.1, none appears for him.

6. The Tribunal, in paragraph No.11 of its order, has made an observation that in O.P. No.113 of 1999, which was filed by the rider of the two wheeler, on which the petitioner was riding pillion, the Tribunal has apportioned the liability at 25% holding that the driver of the two wheeler contributed to the accident and thereby, applied the same principle in the present claim petition and, though, arrived at Rs.16,000/- towards compensation, deducted 25% thereof and awarded Rs.12,000/-.

7. So far as the injuries are concerned, the petitioner sustained fracture of right femur shaft of upper 1/3rd, besides two more simple injuries. The Tribunal without indicating anything, just opined that it would be just and reasonable to grant Rs.12,000/- towards pain and suffering. In fact, the Tribunal has not referred to relevant details as to where the petitioner was treated and surgical intervention undergone. The Tribunal has taken note of medical bills under Ex.A.4 and granted Rs.2,200/- spent by the petitioner in CMC Hospital, Vellore, though, the petitioner is a resident of Chittoor town,

whereas CMC Hospital is located in the State of Tamilnadu. Thus, certain amounts under relevant heads were not at all taken cognizance of by the Tribunal. In that view of the matter, it has to be held that the amount that was granted by the Tribunal was a meager sum without proper appreciation of the evidence on record.

8. The oral evidence adduced by the petitioner shows that the father of the petitioner, as guardian and next friend of the petitioner, examined himself as P.W.1 and examined one K.Srinivasulu, an eyewitness to the accident, as P.W.2 and the petitioner as P.W.3, besides documentary evidence, one of which, Ex.A.4, would reflect that the petitioner was treated in CMC Hospital, Vellore. Therefore, when kept in view, the petitioner was treated in CMC Hospital, Vellore, referred by the Government Hospital, Chittoor, for treatment to fracture of right femur shaft of upper 1/3rd, the amount of Rs.12,000/- granted by the Tribunal is enhanced to Rs.35,000/-, besides granting Rs.6,000/- for two simple injuries (at Rs.3,000/- per injury). Besides the same, the amounts of Rs.5,000/- towards extra nourishment and Rs.10,000/- towards transport and attendant charges are granted. The amount of Rs.4,000/- granted towards medical expenses is maintained.

9. Thus, the petitioner is entitled to a total sum of Rs.60,000/- (Rupees sixty thousand). Since the finding recorded by the Tribunal in regard to contributory negligence to the extent of 25% by the driver of the two-wheeler, on which the petitioner was riding

pillion, while confirming that finding, when deducted, the petitioner is entitled to Rs.45,000/- (Rupees forty five thousand) as against Rs.12,000/- 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 and the interest at 7.5% per annum is granted on the enhanced amount in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**¹.

10. 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.

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

A. SHANKAR NARAYANA, J

30th August, 2016
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¹ 2013 ACJ 1403