

HON'BLE SRI JUSTICE A. SHANKAR

NARAYANA

M.A.C.M.A. No.15 OF 2005

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JUDGMENT:

Having got Dissatisfied with the award of Rs.4,500/- as compensation by the order and decree, dated 20-07-2004, in O.P. 69 of 2001, on the file of the Chairman, Motor Accidents Claims Tribunal - cum - V Additional Chief Judge, City Civil Court, 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'), the instant appeal is preferred by the petitioner under Section 173 of the Act, seeking enhancement of compensation on the ground that the Tribunal has granted a very meager amount though, he sustained fracture.

2. The appellant herein is the petitioner in O.P. before the Tribunal while respondent Nos.1 and 2, who are owner and insurer of Auto-rickshaw bearing registration No.AP 28U 2462, respectively, are Respondent Nos.1 and 2, 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, in brief, are that on 05-10-2000, the

petitioner was proceeding from Hyderabad to Ibrahimpatnam in an auto-rickshaw bearing registration No.AP 28U 2462, and when it reached near Imjapur katta, since the driver of the auto-rickshaw drove it in a rash and negligent manner and unable to control the speed of the vehicle, it turned upside down resulting injuries to the petitioner. The Station House Officer, Vanastalipuram Police Station, Hyderabad also registered a case in Crime No.377 of 2000 under Section 337 IPC against the driver of the auto-rickshaw. The petitioner claims that he spent huge amount for the injuries he sustained. Therefore, sought a sum of Rs.1,50,000/- as compensation against respondent Nos.1 and 2 being owner and insurer of the auto-rickshaw.

5. Respondent No.1, owner of the vehicle, filed counter denying the taking place of the accident and the averments made in the claim petition.

6. Respondent No.2 – Insurance Company also strongly opposed the claim by filing separate counter.

7. On the basis of the pleadings, the Tribunal framed three issues about fixing the responsibility for the accident.

8. During inquiry before the Tribunal, to substantiate the claim, the petitioner examined himself as PW.1 and

also examined Dr. K.L.J. Rao as PW.2 and marked Exs.A-1 to A-14. On behalf of respondents, no witnesses were examined, but a copy of insurance policy was marked as Ex.B-1 on consent.

9. The Tribunal found issue No.1 in favour of the petitioner holding that the accident had occurred due to rash and negligent driving of the driver of the auto-rickshaw. Concerning issue No.2 as to determination of compensation, basing on the evidence of PW.2, the doctor, who deposed that PW.1 was admitted in his hospital on

31-03-2001 and fracture must have sustained by the petitioner

a month prior to 31-03-2001, and since the accident took place on

05-10-2000, the Tribunal disbelieved the fracture injury as projected by the petitioner and, therefore, treating the injury as simple for the reasons that even charge sheet filed against the accused was for the offence under Section 337 IPC, granted a sum of Rs.2,000/- towards pain and suffering; Rs.2,000/- towards medicines and extra nourishment; and Rs.500/- towards transport charges, making a total of Rs.4,500/- as compensation.

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 has not properly evaluated the evidence on record as it simply relied on the statement of PW.2 and arrived at a wrong conclusion that the petitioner sustained only simple injury but not fracture injury and, therefore, sought to grant balance amount.

11. Heard Sri C. Buchi Reddy, learned counsel for the appellant and Sri N.J. Sunil Kumar, learned counsel for respondent No.2. Though, respondent No.1 was not served with notice, it makes no difference since he suffered decree passed by the Tribunal.

12. Perused the order and evidence on record. So far as the finding recorded by the Tribunal that medical evidence through PW.2 would prove that the petitioner must have sustained a fracture injury a month prior to 31-03-2001 and, therefore, the said injury could not have been caused on account of the accident cannot be disturbed as the accident had taken place on 05-10-2000 and that too in the presence of admissions made by PW.2.

13. Be that as it may, since the amount awarded by the Tribunal at Rs.4,500/- for the injury sustained by the petitioner, keeping in view, that the petitioner would have been put to some inconvenience, the same is enhanced to Rs.10,000/- as compensation.

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.5,500/-, interest is granted at the rate of 7.5% per annum from the date of petition 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 20-07-2004, in O.P. No.69 of 2001, passed by the Tribunal, are modified, enhancing the compensation to Rs.10,000/- (Rupees ten thousand) from Rs.4,500/- with interest at the rate of 9% per annum on the amount of Rs.4,500/- granted by the Tribunal and at the rate of 7.5% per annum on the enhanced amount of Rs.5,500/-(Rupees five thousand and five hundred) from the date of petition till realization. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

February 26, 2016.

Mgr

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