

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1965 OF 2005

JUDGMENT:

Dissatisfied with the award of Rs.31,000/- as compensation granted by the learned Chairman, Motor Accident Claims Tribunal - cum - III Additional District Judge, Vijayawada (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'), by the order and decree, dated 06-05-2005, in M.V.O.P. No.656 of 2002, the instant appeal is preferred by the petitioner seeking enhancement.

2. The appellant herein is the petitioner in M.V.O.P. before the Tribunal, while respondent Nos.1 and 2, who are owner and insurer of Scooter bearing registration No.AP 16AD 4649, respectively, are respondents as such.

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

4. The facts would show that on 19-04-2002, while the petitioner was waiting to board an RTC bus on M.G. Road at Autonagar Bus-stand, at about 7:25 hours,

respondent No.1 drove the Bajaj Chetak Scooter bearing registration No.AP 16AD 4649 in a rash and negligent manner while coming from Krishnanagar and hit him, resulting in injuries to him. He claims that he was immediately shifted to Rameeja Orthopaedic Centre, and even police registered

a case having recorded his statement. Stating that he was working as Mechanic in APSRTC, and on account of injuries sustained in the accident, his promotion chances have become bleak and, therefore, sought to grant Rs.1,00,000/- as compensation against respondent Nos.1 and 2, being owner and insurer, respectively, of the vehicle.

5. Respondent No.1, owner of the Scooter, remained *ex parte* before the Tribunal, whereas, respondent No.2 - its insurer, opposed the claim.

6. The Tribunal having framed three issues, examined the petitioner as PW.1 and the Medical Officer from Rameeja Orthopaedic Centre as PW.2 and marked Exs.A-1 to A-9. On behalf of respondents, no evidence was let in.

7. The Tribunal held both the issues in favour of the petitioner, but, however, restricted the claim to Rs.31,000/- as against Rs.1,00,000/- with interest at 7.5% per annum

thereon from the date of petition till realization.

8. It is the aforesaid order which is under challenge in the instant appeal seeking enhancement contending in the grounds that the Tribunal has not properly appreciated the evidence on record, and though, the doctor was examined, the Tribunal, somehow, granted Rs.8,000/- as against Rs.10,802/- towards medical expenditure incurred by the petitioner. It is also his case that though, the petitioner sustained multiple fractures, the Tribunal has granted only Rs.20,000/- towards the same and, therefore, sought to grant balance amount of Rs.69,000/-.

9. Heard Sri V. Padmanabha Rao, learned counsel for the appellant. Though, service was effected on respondent Nos.1 and 2, who are owner of the scooter and its insurer – M/s Oriental Insurance Company Limited, none appears for them.

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

11. It is not in dispute that no document is filed from Government Hospital and only the injury certificate and discharge summary of Rameeja Orthopaedic Centre are made available by examining the doctor as PW.2 by the petitioner. Though, PW.2 has issued a certificate stating that the petitioner sustained partial permanent disability to

the extent of 10%, but the Tribunal did not agree with it and granted amounts basing on the nature of injuries sustained.

12. Now, turning to the compensation granted by the Tribunal, so far as injuries are concerned, just referring to Ex.A-2 discharge summary, granted Rs.20,000/-. The Tribunal made a mention in paragraph 10 of the judgment that the contesting respondent has not shattered the evidence of PW.2 as nothing was suggested to him that the petitioner did not sustain multiple fractures or whether the injuries sustained are not grievous in nature. When the evidence of PW.2 is seen, it shows that the petitioner sustained multiple fractures to his left hand and left side ribs. Even X-rays have been filed and marked by the Medical Officer. When kept in view, the multiple fractures sustained by the petitioner, proved through the evidence of PW.2, certainly, the amount of Rs.20,000/- granted by the Tribunal is on lower side, hence, the same is enhanced to Rs.40,000/- including pain and suffering. The amount of Rs.8,000/- granted by the Tribunal towards medical expenses is enhanced to Rs.10,802/- rounding it to Rs.10,800/-, as it is based on Ex.A-5 medical bills proved through the evidence of PW.2 and Ex.A-4. The other amount of Rs.3,000/- granted by the Tribunal is enhanced to

Rs.10,000/-, towards extra-nourishment, travelling expenses and other incidental expenditure. Thus, in all, the petitioner is entitled to Rs.60,800/- (Rupees sixty thousand and eight hundred) as compensation as against Rs.31,000/- granted by the Tribunal. So far as the interest is concerned, the Tribunal has granted it at the rate of 7.5% per annum, the same is maintained.

13. In view of the foregoing discussion, the appeal is allowed in part, and the order and decree, dated 06-05-2005, passed by the Tribunal in M.V.O.P. No.656 of 2002 are modified enhancing the compensation to Rs.60,800/- (Rupees sixty thousand and eight hundred) from Rs.31,000/- with interest at the rate of 7.5% per annum 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

June 27, 2016.

Mgr