

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1076 OF 2005

JUDGMENT:

Having got dissatisfied with the amount of Rs.31,000/- granted as compensation by the order dated 24.02.2005 in O.P. No.1776 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge (Fast Track Court), Nizamabad (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-petitioner 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 the Lorry bearing registration No. AP 25 T 6177, respectively, were respondent Nos.1 and 2, respectively, in the original petition.

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

4. The facts in brief are that on 03.09.2001, when the petitioner along with another was traveling in a tractor bearing registration No. AP 25 F 7322 with trolley No.AP 25

F 8907 to Nizamabad, to get a transformer repaired, and reached opposite Manjith Singh Dhaba on National Highway No.7 in Dichpally limits at about 3.30 pm, a lorry bearing registration No.AP 25 T 6177, driven at high speed in a rash and negligent manner, dashed the tractor and trolley, due to which, both of them sustained injuries. According to the petitioner, he was shifted to Government Headquarters Hospital, Nizamabad and from there, he was shifted to a private hospital for further treatment and spent Rs.40,000/- towards treatment and even the tractor was damaged with estimated value to a tune of Rs.30,000/-. Claiming that he was doing agriculture earning Rs.6,000/- per month being a healthy person and, subsequent to accident, he became disabled having suffered permanent disability, sought a sum of Rs.1,50,000/- as compensation from respondent Nos.1 and 2, who are the owner and insurer of the lorry, respectively.

5. Both the respondents filed separate counters resisting the claim by raising various pleas. Respondent No.1, however, claimed that respondent No.2, being the insurer, is burdened to indemnify him and, as such, sought to exonerate him from the liability.

6. Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry, the petitioner examined himself as P.W.1

and marked Exs.A.1 to A.8 to substantiate his claim, but has not examined the doctor; whereas, on behalf of the respondents, no witnesses were examined, but the copy of insurance policy was marked as Ex.B.1 on consent.

7. The Tribunal, having analysed the evidence on record, found favour with the petitioner so far as issue No.1 is concerned. On issue No.2, the Tribunal has refused to accept the disability at 50%, as mentioned in Ex.A4 – Disability Certificate issued by a doctor by name Ramulu, and awarded Rs.15,000/- towards fracture injury to the left knee, Rs.3,000/- towards simple injury, Rs.5,000/- towards pain and suffering, Rs.5,000/- towards medicines and extra nourishment, Rs.2,000/- towards loss of earnings and Rs.1,000/- towards transport charges. Thus, in all, the petitioner was granted a sum of Rs.31,000/- with interest at 9% per annum from the date of petition till the date of deposit.

8. On the ground that the compensation granted was very meager, the petitioner preferred the instant appeal mainly contending that the Tribunal has not properly appreciated the evidence and, without there being any reason, discarded the Disability Certificate issued by Dr.L.Ramulu, even though, Ex.A3 reflects that the petitioner sustained fracture to the left knee and, therefore, he sought to grant the balance amount of compensation.

9. Heard Sri M.Rajamalla Reddy, learned counsel for the appellant, and Sri Srinivasa Rao Vutla, learned Standing Counsel for respondent No.2-Insurance Company. Despite service of notice on respondent No.1, none appears.

10. Since the doctor was not examined by the petitioner for the reasons best known to him, the Disability Certificate – Ex.A4 stands not proved and, therefore, the finding recorded by the Tribunal that Ex.A4 cannot be taken into consideration, cannot be faulted. So far as the amounts granted by the Tribunal under various heads are concerned, the amount of Rs.15,000/- granted towards fracture of the left knee requires enhancement and, therefore, the same is enhanced to Rs.25,000/-. The Tribunal has granted Rs.3,000/- towards simple injury, which does not warrant interference, and the amount of Rs.5,000/- granted by the Tribunal towards pain and suffering is enhanced to Rs.10,000/-. The other amounts i.e., Rs.5,000/- granted by the Tribunal, towards medicines and extra nourishment, and Rs.1,000/- towards transport charges, are maintained. The amount of Rs.2,000/- granted towards loss of temporary earnings is maintained.

11. Thus, the petitioner is entitled to a total sum of Rs.46,000/- (Rupees forty six thousand) as against Rs.31,000/- granted by the Tribunal, towards compensation

and the same is accordingly granted. So far as the interest is concerned, the Tribunal granted interest at 9% per annum and the same is maintained on the amount of Rs.31,000/- granted by the Tribunal, but on the enhanced amount of Rs.15,000/-, interest at 7.5% per annum is granted from the date of petition till realization as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**^[1].

12. 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.

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

A. SHANKAR NARAYANA, J

04th February, 2016
v v

^[1] 2013 ACJ 1403