

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

MACMA.No.2670 of 2005

JUDGMENT:

The instant appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), seeking enhancement of compensation, having got dissatisfied with the amount of Rs.23,000/- granted as compensation by the order dated 19.05.2005 in O.P.No.417 of 2001 on the file of the Chairman, Motor Accident Claims Tribunal-cum-IV Additional District Judge (F.T.C), Mahabubnagar, as against the claim of Rs.1,00,000/- laid under Section 166 of the Act, for the injuries sustained by the appellant-petitioner in a road accident.

2. The appellant herein is the petitioner, while respondent Nos.1 and 2, who are the owner and the insurer of the auto bearing registration No.AP-22-T-8225, 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 08.09.1998 at about 5.10 p.m., while the petitioner along with passengers was proceeding in his auto bearing registration No.AP-22-T-8225 towards Bhoothpoo and when it reached near Palakonda Bridge, while overtaking RTC bus, suddenly a tractor bearing registration No.AP-22-T-4674 passing through the said bridge came and dashed the auto, due to which, the petitioner and also the inmates of the auto received injuries. The petitioner, claiming that he was 28 years old earning Rs.5,000/- per month and spent Rs.20,000/- towards medical expenses, sought a sum of Rs.1,00,000/- as compensation from respondent Nos.1 and 2, who are the owner and insurer of the auto, respectively.

5. Before the Tribunal, respondent No.1 filed counter resisting the claim by taking the plea that since the auto was insured with respondent No.2, respondent No.2 is obligated with the duty to indemnify him and, therefore, sought to dismiss the claim petition against him. Respondent No.2-insurer opposed the claim by filing a counter raising various pleas.

6. On the basis of the said pleadings, the Tribunal has framed the following three issues:

“1. Whether the accident occurred on

8.9.1999 at 1710 hours, near Palkonda Bridge, Mahabubnagar Rural, due to rash and negligent driving of Auto rickshaw bearing No.AP-22-T-8225 by its driver and whether it resulted in causing injuries to the petitioner?

2. Whether the petitioner is entitled for compensation?

If so to what amount and from whom?

3. To what relief?"

7. During enquiry, the petitioner examined himself as P.W.1 and marked Exs.A1 to A7 to substantiate his claim; whereas, on behalf of Insurance Company, no witnesses were examined, but the copy of Insurance Policy was marked as Ex.B1 on consent.

8. On issue No.1, the Tribunal, having discussed elaborately the contents of Exs.A1 to A6, recorded a finding that the driver of the lorry was not negligent, however, on issue No.2, having considered that both bones of left leg of the petitioner were fractured, besides sustaining two simple injuries, discarded the Disability Certificate marked as Ex.A7 on the ground that the Medical Officer was not examined to prove the contents therein and granted Rs.15,000/- towards pain and suffering, Rs.3,000/- towards medical expenses, Rs.2,000/- towards extra-nourishment and Rs.3,000/-

towards loss of earnings. Thus, in all, the petitioner was granted a sum of Rs.23,000/- with interest at 9% p.a. from the date of petition till the date of realisation against respondent Nos.1 and 2 fastening joint and several liability against them.

9. Aggrieved by the aforesaid order, which is under challenge, the instant appeal is preferred contending that the petitioner is, in fact, entitled to Rs.3,00,000/-, but somehow, mentioned Rs.1,00,000/- only as the claim amount in the original petition. Since he suffered fracture to both bones of the left leg and taken considerable time for recovery, the petitioner sought to grant a total sum of Rs.3,77,000/-.

10. Heard Sri K.Asad Ahmmed, learned counsel for the appellant-petitioner. No representation for respondent No.2. None appears for Respondent No.1.

11. Perused the order under challenge and evidence let in by the petitioner.

12. The finding recorded by the Tribunal that Ex.A7 was not proved by examining the Medical Officer is well reasoned, as there is no other evidence on record to show that the injuries sustained by the petitioner would

occasion partial permanent disability and, therefore, the said finding is confirmed. However, concerning the amounts granted by the Tribunal, it appears that they are on lower side when kept in view, the grievous injuries sustained by the petitioner. As per Ex.A2 - wound certificate and Ex.A4 - X ray film with report, both bones of the left leg of the petitioner were broken. Since it constitutes one of the main limbs to pursue any occupation, more so the driving, for the period during which he had undergone treatment and also subsequent period for attaining normalcy to pursue the occupation, the amount of Rs.15,000/- granted by the Tribunal towards pain and suffering requires enhancement and, therefore, the same is enhanced to Rs.40,000/-. The amount of Rs.3,000/- granted by the Tribunal, towards medical expenditure, is maintained. The amount of Rs.2,000/- granted towards extra-nourishment is enhanced to Rs.10,000/-. Towards loss of temporary earnings, the amount of Rs.3,000/- granted by the Tribunal is enhanced to Rs.12,000/- i.e., earnings at Rs.2,000/- per month for six months as it would have required six months for the petitioner to recover completely.

13. Thus, the petitioner is entitled to a total sum of Rs.65,000/- (Rupees sixty five thousand), as against

Rs.23,000/- granted by the Tribunal, towards compensation, and the same is, accordingly, granted.

14. So far as the rate of interest is concerned, the Tribunal granted interest at 9% per annum and the same is maintained on the amount of Rs.23,000/- granted by the Tribunal, but on the enhanced amount, interest at 7.5% per annum is granted from the date of petition till realisation in view of the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**^[1].

15. 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.

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

**JUSTICE A.SHANKAR
NARAYANA**

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