

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1319 OF 2005

JUDGMENT:

Feeling dissatisfied with the award of Rs.39,500/- as compensation as against the claim of Rs.1,50,000/- laid under Section 166 (1) (a) of the Motor Vehicles Act, 1988 (for short 'the Act') read with Rule 455 of Andhra Pradesh Motor Vehicles Rules, 1989, by the order and decree, dated 10-03-2005, in O.P. No.1654 of 2001, on the file of the Chairman, Motor Accident Claims Tribunal - cum - IV Additional District Judge (Fast Track Court), Nizamabad (for short 'the Tribunal'), the instant appeal is preferred seeking enhancement.

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 25T 9373, respectively, are arrayed as such.

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 would show that on 26-05-2001, the petitioner along with his family members were proceeding

in an auto-rickshaw bearing registration No.AP 25T 9373 from Gadwal Camp to Nizamabad, and at about 2.30 p.m., when it reached near Makloor village outskirts, since the driver drove it in a rash and negligent manner, it hit another auto-rickshaw coming in opposite direction, and thereby the petitioner sustained fracture of his right leg, injuries to chest, right hand and also received other injuries. Contending that he spent Rs.40,000/- towards medical expenses and Rs.10,000/- towards extra nourishment and got himself treated in a private Nursing Home after he was discharged from the Government Headquarters Hospital, Nizamabad, he was earning a sum of Rs.10,000/- per month on agriculture, estimated the damages, both, special and general at Rs.10,01,500/-, but restricted the claim to Rs.1,50,000/- and, thus, sought to grant the same as compensation against respondent Nos.1 and 2, who are owner and insurer, respectively, of the auto-rickshaw that involved in the accident.

5. Respondent No.1, owner of the auto-rickshaw, remained *ex parte* before the Tribunal.

6. Respondent No.2, insurer of the vehicle, contested the claim by filing written statement.

7. On the basis of the said pleadings, the Tribunal has framed three issues.

8. During inquiry before the Tribunal, on behalf of the petitioner, he examined himself as PW.1, besides examining one

Dr. R. Balaiah as PW.2 and marked Exs.A-1 to A-4, besides summoning and marking Ex.X-1 case sheet. On behalf of respondent No.2, no witnesses were examined, but copy of insurance policy was marked as Ex.B-1 on consent.

9. The Tribunal having assessed the evidence on record held issue No.1 in favour of the petitioner. On issue No.2, basing on the evidence of PWs.1 and 2 and Ex.X-1 and Ex.A-3 contents, having found that the petitioner sustained fracture of chip lateral condyle of right femur, granted a sum of Rs.10,000/-; Rs.5,000/- towards pain and suffering; Rs.10,000/- towards medical expenses; Rs.10,000/- towards future treatment; Rs.4,500/- towards temporary loss of income, making a total of Rs.39,500/- as compensation with interest at 9% per annum thereon from the date of petition till the date of deposit.

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 appreciated the medical evidence through PW.2 and,

therefore, sought to grant balance amount.

11. Heard Sri M. Rajamalla Reddy, learned counsel for the appellant. Despite service of notice on respondent Nos.1 and 2, who are owner and insurer, respectively, of the vehicle, none appears for them.

12. Perused the order and the material, both, oral and documentary, let in by the parties.

13. The evidence of PW.2, Medical Officer, who treated the petitioner while he was working as Deputy Civil Surgeon in Headquarters Hospital, Nizamabad, shows that he found two lacerated injuries on the right knee anterior measuring 1½" x ½" of comminuting to the joint cavity and recorded it as grievous injury. His evidence also shows that X-ray shows chip fracture lateral condyle of right femur, and the age of injury was less than six hours. It is no doubt true, he was cross-examined by the learned counsel for respondent No.2, but nothing is brought out to disprove the description of injuries as spoken to by him. The Tribunal has treated two fractures and, thus, granted a sum of Rs.10,000/- for the fractures. Admittedly, the claim is under Section 166 of the Act, but not under Section 163-A of the Act. Therefore, the Tribunal was not right in granting Rs.5,000/- as compensation for the fracture as provided in the

schedule.

14. When examined in the light of other evidence, the amount of Rs.10,000/- granted by the Tribunal towards injuries is enhanced to Rs.20,000/- towards each injury making a total of Rs.40,000/- which includes the amount of Rs.5,000/- granted by the Tribunal towards pain and suffering. The amount of Rs.10,000/- granted by the Tribunal towards medical expenses is maintained. Likewise, the amount of Rs.10,000/- granted towards future treatment is also maintained. The amount of Rs.4,500/- granted by the Tribunal towards loss of temporary earnings is enhanced to Rs.9,000/- keeping in view, that the petitioner would have required at least six months period for regaining normalcy. The Tribunal has not granted any amounts under the heads of extra nourishment and transport charges and, therefore, a sum of Rs.5,000/- and Rs.2,000/-, respectively, are granted. Thus, in all, the petitioner is entitled to Rs.76,000/- as compensation as against the amount of Rs.39,500/- granted by the Tribunal.

15. Concerning rate of interest, the Tribunal granted it at 9% per annum, the same is not disturbed. But, on the enhanced amount, rate of interest at 7.5% per annum is granted in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and**

others^[1].

16. In the result, the appeal is allowed in part, and the order and decree, dated 10-03-2005, in O.P. No.1654 of 2001, passed by the Tribunal are modified enhancing the compensation to Rs.76,000/- (Rupees seventy six thousand) from Rs.39,500/- with interest at 9% per annum on the amount of Rs.39,500/- granted by the Tribunal and at 7.5% per annum on the enhanced amount of Rs.36,500/- (Rupees thirty six thousand and five hundred) 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

April 01, 2016.

Mgr

^[1]. 2013 ACJ 1403