

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1302 OF 2005

JUDGMENT:

Having got dissatisfied with the award of Rs.14,000/- as compensation as against the claim of Rs.1,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') read with Rule 475 (1)(b) of the Motor Vehicles Rules, by the order and decree, dated 03-03-2005, in O.P. No.517 of 2000, on the file of the learned Chairman, Motor Accident Claims Tribunal - cum – II Additional District Judge (Fast Track Court), Khammam (for short 'the Tribunal'), the instant appeal is preferred by the petitioner seeking enhancement and fastening liability on respondent No.3.

2. The appellant herein is petitioner in O.P. before the Tribunal, while respondent Nos.1 to 3, who are driver, owner and insurer of tractor and trailer bearing registration No.AP 20U 2354 and 2355, respectively, are respondents as such.

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

4. The petitioner was a minor girl of 12 years age on

the date when the accident had taken place and claim petition was laid. The facts would show that on 20-07-2002, at about 9.00 a.m., while she was proceeding to school along with her father on a Luna moped bearing registration No.AP 20C 4738, a Tractor and Trailer bearing registration Nos.AP 20U 2354 and 2355 driven by its driver in a rash and negligent manner came from behind and hit the Luna, due to which, she fell down and sustained injuries to her left knee joint and other parts of her person. Claiming that she incurred medical expenses for her treatment in a hospital, sought a sum of Rs.1,00,000/- as compensation.

5. Respondent No.1, being driver, respondent No.2, being owner, remained *ex parte* before the Tribunal. Whereas, respondent No.3 - Insurer opposed the claim.

6. The Tribunal framed three issues in order to determine the liability as well as compensation to which the petitioner is entitled.

7. During inquiry, mother of the petitioner being natural mother and guardian was examined as PW.1, besides examining the doctor, who treated her, as PW.2 and marked Exs.A-1 to A-5. On behalf of respondent No.3, RW.1 was examined and Exs.B-1 and B-2 were marked.

8. Respondent No.3, except feebly contending in the counter throwing burden on the petitioner to prove that the vehicle was insured with it, no specific plea was taken as to the policy being in force, or whether the policy was issued or not, and if issued, whether it was cancelled at a later point of time?

9. The Tribunal having found issue No.1 in favour of the petitioner, on issue No.2, granted Rs.5,000/- towards grievous injury, Rs.2,000/- for simple injury, Rs.5,000/- towards medical expenses and Rs.2,000/- towards loss of studies, making a total of Rs.14,000/- towards compensation with interest at 9% per annum.

10. It is the aforesaid order which is under challenge in the instant appeal mainly contending that the Tribunal has not properly appreciated the evidence of doctor and had properly appreciated the same, the Tribunal would have granted balance amount even and, therefore, sought to grant balance amount.

11. Heard Sri M. Rajamalla Reddy, learned counsel for the appellant, and Sri Ch. Venkat Raman, learned counsel for respondent No.2. No representation for Insurance Company - respondent No.3. Respondent No.1 since refused to receive notice, service is proper.

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

13. The wound certificate marked as Ex.A-3 and the evidence of PW.2, the doctor, would clearly show that the petitioner sustained ligament injury on the left knee and other soft tissue injuries and she had undergone Plaster of Paris being applied to the left knee joint. Since Ex.A-3 indicates that the said injury is grievous in nature, certainly, the amount of Rs.5,000/- granted by the Tribunal has to be construed as meager sum and, therefore, the same is enhanced to Rs.25,000/- including pain and suffering. Besides the same, a sum of Rs.5,000/- is granted towards extra nourishment and attendant charges. The amount of Rs.5,000/- granted by the Tribunal towards treatment is maintained. For two simple injuries, a sum of Rs.6,000/- is granted as against Rs.2,000/- granted by the Tribunal. The amount of Rs.2,000/- granted by the Tribunal to compensate loss of studies is maintained. Thus, in all, the petitioner is entitled to Rs.43,000/- (Rupees forty three thousand) as compensation as against Rs.14,000/- granted by the Tribunal. So far as the interest is concerned, the Tribunal has granted it at the rate of 9% per annum, the same is maintained, but, however, on the enhanced amount of Rs.29,000/-, the interest at the rate of 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].

14. In view of the foregoing discussion, the appeal is allowed in part, and the order and decree, dated 03-03-2005, passed by the Tribunal in O.P. No.517 of 2000 are modified enhancing the compensation to Rs.43,000/- (Rupees forty three thousand) from Rs.14,000/- with interest at the rate of 9% per annum on the amount granted by the Tribunal and at the rate of 7.5% per annum on the enhanced amount of Rs.29,000/- (Rupees twenty nine thousand) from the date of petition till realization, and confirming the same in all other respects. 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 24, 2016.

Mgr

^[1]. 2013 ACJ 1403