

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1960 OF 2005

JUDGMENT:

Having got dissatisfied with the award of Rs.3,78,050/- as compensation by the order dated 28.03.2005 in O.P. No.396 of 1999 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Nizamabad (for short, 'the Tribunal') as against the claim of Rs.6,00,000/- 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 jeep bearing registration No.AP 25T 2307, are respondent Nos.1 and 2, respectively, in the original petition.

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

4. The facts in brief are that the petitioner along with another visited doctor Bhoom Reddy at Nizamabad on 19.12.1998 and they were returning to their village on their scooter bearing registration No.AP 25T 1503 and

when they reached the village limits of Mallaram at about 4-30 p.m., a jeep bearing registration No.AP 25T 2307, driven by its driver in a rash and negligent manner, dashed the scooter, due to which, the petitioner fell down and received multiple fractures to his right leg, right hand, collar bone and forehead. He claims that he incurred Rs.1,50,000/- for treatment. According to him, he was a businessman earning Rs.15,000/- per month besides doing agriculture and he sustained permanent disability and unable to earn anything and, therefore, sought a sum of Rs.6,00,000/- as compensation under Section 166 of the Act.

5. Respondent No.1-owner of the accident vehicle filed his written statement raising various pleas. However, stating that the vehicle was insured with respondent No.2, sought to proceed against respondent No.2-Insurance Company. Respondent No.2 filed counter resisting the claim also raising various pleas. Finally, contending that the claim was excessive and arbitrary, sought to dismiss the claim petition.

6. Basing on the said pleadings, the Tribunal framed two issues about the responsibility for the accident. During enquiry, the petitioner examined himself as P.W.1 besides examining two doctors as P.Ws.2 and 3 and marked Exs.A.1 to A.13 to substantiate his claim; whereas, on behalf of respondent No.2-Insurance

Company, no witnesses were examined and no documents were filed.

7. The Tribunal, since issue No.1 is a comprehensive in nature, agreeing with the petitioner that the accident took place due to rash and negligent driving of the driver of the jeep, recorded a finding as such. However, in regard to the injuries sustained by the petitioner, while determining compensation, taken the evidence of P.Ws.2 and 3 and the injuries as mentioned in Ex.A.5-discharge summary issued by Kamineni Hospital, Hyderabad and keeping in view, that the petitioner sustained fracture of right humerus, fracture of both bones of right forearm, fracture of both bones of right leg, fracture of right molar bone, lacerated wound right side of the face and right facial nerve palsy, and a number of surgical interventions done and also keeping in view, the evidence of P.W.2 would show that the petitioner sustained 60% disability due to restriction of movements of right forearm and facial nerve palsy, which resulted difficulty in right eye and disfigurement of the face and the prolonged treatment, granted Rs.1,00,000/- towards disability, Rs.25,000/- towards pain and suffering, Rs.1,33,050/- towards medical expenses and transport charges based on Ex.A.7 and Rs.1,20,000/- calculated towards loss of earnings @ Rs.5,000/- as monthly earnings for a period of two years, during which, the petitioner was disabled and, thus, granted a total sum of Rs.3,78,050/- with interest at

9% per annum.

8. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the Tribunal has not properly appreciated the evidence and, somehow, not taken into consideration the disability suffered by the petitioner at 60%. It is also the grievance of the petitioner that despite the fact that he suffered multiple fractures to various parts of his person and disfigurement of his face including right facial nerve palsy, the Tribunal has not granted fair and adequate compensation and, therefore, sought to grant the balance amount.

9. Heard Sri M.Rajamalla Reddy, learned counsel for the appellant-petitioner, and Sri Naresh Byrapaneni, learned Standing Counsel for respondent No.2-Insurance Company. Though, respondent No.1 was not served, since the notice was sent to the address given in the cause title of the original petition, it can be presumed that the notice was affected. Even otherwise, respondent No.1 suffered decree being the owner of jeep. Hence, in his absence, the request for enhancement of compensation can be adjudicated upon.

10. It is clear from the evidence of P.W.2 and Ex.A.5-discharge summary and the OP tickets issued by Kamineni Hospital, Hyderabad, which reflect that the

petitioner was admitted in surgical interventions and treatment atleast on eight occasions and the injuries he sustained were already referred to in the above. When kept in view, the nature of injuries he sustained and permanent disfiguration of the face due to the injuries and the right eye of the petitioner being affected, certainly, Rs.1,00,000/- granted by the Tribunal towards disability has to be increased to Rs.2,00,000/-. So far as the amount of Rs.25,000/- granted by the Tribunal towards pain and suffering, the same has to be enhanced to Rs.50,000/-. The Tribunal has not granted any amount towards extra nourishment and the attendant charges as could be seen from the order. Therefore, a sum of Rs.10,000/- towards extra nourishment and another sum of Rs.15,000/- towards attendant charges are granted.

11. Thus, the petitioner is entitled to a total sum of Rs.5,28,050/- (Rupees five lakh twenty eight thousand and fifty) as against Rs.3,78,050/- granted by the Tribunal towards compensation and the same is accordingly granted. So far as the rate of interest is concerned, the Tribunal granted the same at 9% per annum and the same is maintained on the amount of Rs.3,78,050/- granted by the Tribunal and the interest at 7.5% per annum is granted on the enhanced amount of Rs.1,50,000/- in view of the decision of the Hon'ble Supreme 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 closed.

A. SHANKAR NARAYANA, J

22nd June, 2016

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^[1] 2013 ACJ 1403