

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.1378 OF 2005

JUDGMENT:

Feeling dissatisfied with the award of Rs.69,663/- as compensation by order, dated 05.01.2005, in M.V.O.P.No.765 of 2000 on the file of Chairman, Motor Vehicles Accident Claims Tribunal – cum – IV Additional District Judge, Fast Track Court, Tanuku, as against the claim of Rs.1,50,000/-, petitioner has preferred the instant appeal, under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), seeking enhancement of compensation.

2. The appellant is petitioner, whereas respondent Nos.1

and 2 are respondent Nos.1 and 2 in the O.P. before the Tribunal.

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 in brief are that, on 30.03.1998 at about

10:00 AM, while the petitioner was proceeding on his Scooter bearing registration No.AP-37-B-1179 along with one Isac, pillion rider, to Pippera to meet the Head Master

of the School as per the instructions of the Head Master of the School, where he was working as Teacher, and when they took turn towards Pippura on Ganaparavam road, near the petrol bunk, since the driver of R.T.C. bus bearing registration No.AP-10-Z-4515 shuttling between Rajahmundry and Bhimavaram drove it in a rash and negligent manner, dashed the Scooter, due to which, the petitioner and the said Isac fell down and received injuries. The petitioner claiming that he was working as Teacher in Zilla Parishad High School drawing Rs.8,000/- per month and due to the fracture sustained by him, he was unable to perform his duties as efficiently as he used to perform prior to the accident, sought Rs.1,50,000/- as compensation from the Corporation, under Section 166 of the Act.

5. Respondent No.1 – driver of the R.T.C. bus filed memo adopting the counter filed by respondent No.2 – Corporation raising various pleas, one of which being that respondent No.1 having found two persons falling down from the motor-cycle, admitted them in Tadepalligudem Hospital on humanitarian grounds and sought to dismiss the claim petition.

6. Based on the said pleadings, in the direction of accounting for responsibility about the accident, the Tribunal has framed three issues. During enquiry, petitioner has examined himself as PW.1 besides

examining one Juttiga Eswarudu as PW.2 and two of the Doctors who treated him as PWs.3 and 4 on commission and marked Exs.A1 to A37 to substantiate the claim laid. On behalf of the Corporation, respondent No.1 examined himself as RW.1, but no documents were marked.

7. On issue No.1, the Tribunal recorded a definite finding that due to the rash and negligent driving of respondent No.1, the accident had occurred. On issue No.2, basing on the injuries described in medical records filed by the petitioner and the evidence of PWs.3 and 4 – medical officers, the Tribunal has granted Rs.20,000/- for the grievous injury, Rs.3,000/- each to other two simple injuries, Rs.33,663/- towards medicines and treatment, Rs.5,000/- towards pain and suffering and Rs.5,000/- towards loss of earnings making a total of Rs.69,663/- as compensation with interest at 9% per annum. Concerning the amount of Rs.40,000/- covered by Ex.A17 and another sum of Rs.10,000/- covered by Ex.A26, holding that the said Certificates were not supported by any bills or cash receipts, the Tribunal has disbelieved them and declined to grant the said amounts.

8. It is the aforesaid order which is questioned in the instant appeal seeking enhancement of compensation on the grounds that the Tribunal has not properly appreciated the evidence on record despite the fact that the petitioner

sustained grievous injury and has let in cogent evidence by examining two of the Doctors who treated him and that the Tribunal without assigning proper reasons excluded Exs.A17 and A26.

9. Heard Sri K. Chidambaram, learned counsel for the appellant. The instant appeal was dismissed for default against respondent No.1 – driver of the R.T.C. bus by order, dated 03.01.2012. No representation for respondent No.2, when the matter is called.

10. Perused the order under challenge and the evidence, both oral and documentary, let in by the petitioner.

11. It is not in dispute that the petitioner sustained fracture of right collar bone and two other simple injuries. The evidence of PWs.3 and 4 would show that the petitioner was admitted on 30.03.1998 in Pinnamaneni Poly Clinic, Siddardha Nagar, Vijayawada, and was treated as inpatient and discharged on 11.04.1998. Their evidence also shows that the petitioner sustained fracture of the right collar bone and other injuries to the right shoulder joint and even sustained fracture of the 4th rib on the right side with pneumothorax and for that reason he was also referred to a Chest Doctor and was treated conservatively and even after discharge, he attended to reviews on 01.05.1998, 16.05.1998, 17.05.1998,

01.07.1998, 24.06.1998, 27.05.1998 and 16.03.2000. According to them, PW.1 was having restriction of movements of the shoulder and he had undergone treatment from 22.09.1998 to 06.04.2002 in Visakhapatnam with neck pain and knee joint pain. Though, PWs.3 and 4 were cross-examined by the learned counsel for Insurance Company, nothing is elicited to disbelieve their evidence. Be that as it may, the evidence of PW.3 would show that the petitioner also sustained fracture of 4th rib for which conservative treatment was given. Thus, when kept in view, the grievous injury sustained by the petitioner, the amount of Rs.20,000/- granted by the Tribunal towards that injury requires enhancement and therefore, the same is enhanced to Rs.40,000/-. The amount of Rs.3,000/- granted to each of the two simple injuries is maintained. The Tribunal has granted Rs.5,000/- towards pain and suffering, which is on lower side and the same is enhanced to Rs.15,000/- keeping in view, the nature of injuries and the sufferance the petitioner had undergone. Towards extra nourishment, the Tribunal has not granted any amount and therefore, an amount of Rs.10,000/- is granted. Towards transport charges, no amount is granted and hence, keeping in view, the circumstance the petitioner had attended the Doctors for review, a sum of Rs.5,000/- is granted. Towards medicines and treatment, the Tribunal has granted Rs.33,663/- basing on medical

bills. Ex.A17 is Medical Certificate issued by PW.3 mentioning that the petitioner has spent Rs.40,000/-. Hence, the balance amount of Rs.6,337/- is granted. Even the amount of Rs.10,000/- covered by Ex.A26 cannot be declined in view of the evidence of PW.4. Therefore, the said amount is also granted. The amount of Rs.5,000/- granted towards loss of earnings is maintained. Thus, the compensation granted by the Tribunal at Rs.69,663/- is enhanced to Rs.1,31,000/-. The interest awarded by the Tribunal at 9% per annum is maintained on the original amount of Rs.69,663/- awarded by the Tribunal and on the enhanced amount, the petitioner is entitled to interest at 7.5% per annum, as per the decision of the Honourable Apex Court in **Rajesh and others v. Rajbir Singh and others**^[1].

12. Accordingly, the instant appeal is allowed in part. There shall be no order as to costs.

13. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal shall stand disposed of.

A. SHANKAR

NARAYANA, J

February 08, 2016.

MD

[\[1\]](#) (2013) 9 SCC 54