

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1622 OF 2005

JUDGMENT:

Having got dissatisfied with the award of Rs.20,000/- as compensation by the order dated 23.03.2004 in M.V.O.P. No.229 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge, Kurnool at Nandyal (for short, 'the Tribunal') as against the claim of Rs.1,20,000/- laid under Sections 163-A and 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 van bearing registration No.AP 21U 5927, 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 on 18.03.2001, while the petitioner was travelling in a van bearing registration No.AP 21U 5927 from Giddalur to Nandyal, since the

driver of the van drove it in a rash and negligent manner, it turned upside down, due to which, the petitioner sustained injuries to his face, right thumb and crush injury to his right foot. Hence, he sought a sum of Rs.1,20,000/- as compensation from respondent Nos.1 and 2, who are owner and insurer of the van.

5. Respondent No.1-owner of the accident vehicle remained *ex parte*. Respondent No.2-insurer opposed the claim raising various pleas.

6. Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry, the petitioner examined herself as P.W.1 besides examining the doctor as P.W.2 and marked Exs.A.1 to A.4 to substantiate his claim; whereas, on behalf of respondent No.2-Insurance Company, no witnesses were examined, but a copy of insurance policy was marked as Ex.B.1 on consent.

7. On appraisal of the evidence on record, both, oral and documentary, let in by the petitioner, the Tribunal held issue No.1 in favour of the petitioner; and on issue No.2, having disbelieved the evidence of P.W.2 as regards disability sustained by the petitioner, granted a sum of Rs.2,000/- towards loss of earnings during the period of medical treatment for one month, Rs.7,000/- for seven simple injuries (@ Rs.1,000/- each), Rs.5,000/- for one grievous injury and Rs.6,000/- towards medical

expenditure, making a total sum of Rs.20,000/- with interest at 9% per annum from the date of petition till realization.

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 of the doctor and granted a meager amount as compensation, and, therefore, sought to grant the balance amount.

9. Heard Sri K. Rathangapani Reddy, learned counsel for the appellant, and Sri Bathula Raj Kiran, learned Standing Counsel for respondent No.2-Insurance Company. Despite service of notice on respondent No.1-owner, none appears for him.

10. As could be seen from the order and the material available on record, the petitioner sustained crush injury to his right great toe and that has been the grievous injury. There are other seven simple injuries and even the doctor, who was examined as P.W.2, has admitted that there is no disability certificate issued by him, though, he has mentioned about the disability in his evidence. However, as could be seen from his evidence, the petitioner was suffering with deformity of right great toe, stiffness of great toe with loss of I.P. joint movements for present and also the petitioner suffering with weakness

of great toe and the same cannot be viewed as disability. Therefore, the finding recorded by the Tribunal on this aspect does not warrant interference. However, so far as determination of compensation is concerned, it appears to be on lower side. The Tribunal has granted Rs.1,000/- each to seven simple injuries and the same is enhanced to Rs.3,000/- each making a total of Rs.21,000/-. So far as grievous injury is concerned, the Tribunal has granted Rs.5,000/-. As could be seen from the evidence, it is a deformity of right great toe, with which the petitioner would have suffered for some considerable period. Therefore, the amount of Rs.5,000/- granted by the Tribunal for grievous injury is enhanced to Rs.15,000/-. The amounts granted by the Tribunal of Rs.6,000/- towards medical expenditure and Rs.2,000/- towards loss of earnings during the period of treatment for one month are maintained. Since the Tribunal has not granted any amount towards extra nourishment, a sum of Rs.5,000/- is granted towards the same.

11. Thus, the petitioner is entitled to a total sum of Rs.49,000/- (Rupees forty nine thousand) as against Rs.20,000/- 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 granted by the Tribunal and interest at 7.5% per annum is granted on the enhanced

amount of Rs.29,000/- 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

12th April, 2016

siva

^[1] 2013 ACJ 1403