

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A. C.M.A No.738 OF 2009

JUDGMENT:

The present Civil Miscellaneous Appeal is preferred by the petitioner (claimant) dissatisfied with the amount of Rs.36,300/- granted by the learned Chairman, Motor Accidents Claims Tribunal - cum - II Additional District Judge, West Godavari District, Eluru, through the order and decree, dated 17.10.2005, in O.P. No.762 of 2003, as against her claim of Rs.1,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), and therefore, sought enhancement of compensation for the injuries sustained by her in a motor accident.

2. The appellant herein is the petitioner in the O.P. before the Tribunal, while respondent Nos.1 to 3, who are driver, owner and insurer, respectively of the bus bearing No.AP-9-U-9009 that involved in the accident, are respondent Nos.1 to 3 respectively.

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

4. The petitioner stating that she sustained three grievous injuries i.e., fracture of second and third ribs on

the left side and fracture of lower end (1/3rd) of left forearm and she was shifted to a private nursing home for better treatment from the Government Head Quarters Hospital, Eluru, and spent Rs.25,000/- towards surgeries and medicines and was earning Rs.3,000/- per month by vending milk, sought a sum of Rs.1,00,000/- towards compensation.

5. Respondent Nos.1 and 2, driver and owner of the private bus, remained *ex parte* before the Tribunal.

6. Respondent No.3, insurer of the lorry, opposed the claim by filing a detailed counter.

7. The Tribunal, based on the pleadings, framed three (3) issues in order to determine the compensation as well as negligence in taking place of the accident.

8. During enquiry, on behalf of the petitioner, she herself examined as PW.1 and the doctor who treated her as PW.2 and marked Exs.A-1 to A-4 besides Ex.X-1 case sheet of the petitioner through PW.2, and, on behalf of the insurer, no oral evidence was adduced except marking insurance policy of the bus as Ex.B-1.

9. The Tribunal has recorded a finding in favour of the petitioner on issue No.1. On issue No.2, the Tribunal granted a total sum of Rs.36,300/- which includes Rs.30,000/- towards three injuries at Rs.10,000/- each,

Rs.900/- towards extra-nourishment, Rs.900/- towards attendant charges at Rs.300/- per month for a period of three (3) months and Rs.4,500/- at Rs.1,500/- per month towards temporary loss of earnings, making a total of Rs.36,300/- with interest at 9% per annum.

10. In the grounds of appeal, the petitioner has contended that the Tribunal has not properly appreciated the evidence on record and that the Tribunal ought to have granted Rs.20,000/- for each fracture and Rs.25,000/- towards medical expenses.

11. Heard Sri Naram Nageswara Rao, learned counsel for the petitioner (appellant), and Sri P. Bhanu Prakash, learned counsel for the insurer.

12. It is endorsed in the grounds of appeal that respondent Nos.1 and 2, driver and owner of the bus, are not necessary parties to this appeal.

13. The amount of Rs.30,000/- granted towards injuries is since on lower side as there is fracture of two ribs besides fracture of left forearm on lower 1/3rd and the other is only a simple injury, the same is enhanced to Rs.45,000/- from Rs.30,000/-. Touching Rs.900/- granted towards extra-nourishment, the same is enhanced to Rs.5,000/-, the amount of Rs.900/- granted towards attendant charges is enhanced to Rs.2,000/-. Further, the amount of Rs.4,500/- granted towards partial loss of

earnings during bed ridden period is enhanced to Rs.9,000/- for the reason that at least six (6) months must have taken to regain normalcy.

14. Thus, the petitioner is entitled to a total compensation of Rs.66,000/- (Rupees sixty six thousand only) as against Rs.36,300/- awarded by the Tribunal, and the same is accordingly awarded.

The rate of interest granted by the Tribunal at 9% per annum on the amount of Rs.36,300/- is maintained. However, on the enhanced amount, 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] from the date of petition till realization.

15. Accordingly, the Civil Miscellaneous Appeal is allowed in part modifying the impugned order and enhancing the compensation, as indicated above. 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

July 20, 2016.

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[\[1\]](#) 2013ACJ1403 = 2013(4)ALT35