

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2360 OF 2005

JUDGMENT:

The petitioner in O.P. No.2105 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal - cum - XI Additional Chief Judge (Fast Track Court), City Civil Court, Hyderabad (for short 'the Tribunal'), having dissatisfied with the award of Rs.60,680/- as compensation as against the claim of Rs.1,50,000/- laid by him under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), preferred the instant appeal challenging the order and decree, dated 03-02-2005, passed by the Tribunal, seeking enhancement and also to set aside the finding that the petitioner contributed to the accident to the extent of 1/4th negligence.

2. The appellant herein is the petitioner, while respondent Nos.1 and 2 - erstwhile Andhra Pradesh State Road Transport Corporation (APSRTC), represented by its Managing Director, Hyderabad, and its Depot Manager, Falaknuma Bus Depot, Hyderabad, are respondents as such in O.P. before the Tribunal.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in OP before

the Tribunal.

4. The facts would reveal that on 18-09-2002 at about 4.45 p.m. the petitioner along with one Mr. Sadiq was proceeding on a Luna and when they reached Smashanghat, an RTC bus bearing registration No.AAZ 9864 driven by its driver in a rash and negligent manner came from behind and hit them, due to which, he sustained fractures and other injuries. Claiming that he was treated in hospital and spent huge amount towards treatment laid the aforesaid claim.

5. Respondents' Corporation filed counter traversing the rash and negligent driving attributed to the driver of the RTC bus and, on the other hand, raised the plea that since the petitioner and the pillion rider were under the influence of alcohol, their Luna slipped on the road and, thus, resulted in injuries to them.

6. Basing on the said pleadings, the Tribunal framed the following three issues:

- “ 1. Whether the petitioner received injuries in the accident on 18-9-2002 at 16-45 hours due to the rash and negligent driving of the APSRTC bus bearing No.AAZ 9861, by its driver?
2. Whether the petitioner is entitled to claim compensation from the respondents? If so, to what amount and from

whom?

3. To what relief?"

7. During inquiry, the petitioner examined himself as PW.1, besides examining the pillion rider as PW.3 and the doctor, who treated him, as PW.2 and marked Exs.A-1 to A-43 and Ex.X-1. On behalf of respondents, driver of the RTC bus was examined as RW.1 and a passenger was examined as RW.2 and Exs.R-1 to R-3 were marked.

8. The Tribunal having analyzed the evidence on record, on issue No.1 arrived at the finding that the petitioner contributed to the extent of 25% to the accident and accordingly recorded a finding in paragraph No.23. Concerning determination of compensation, basing on the injuries which are described by PW.2 and mentioned in Exs.A-3 and A-5, granted Rs.6,000/- towards loss of temporary earnings; Rs.2,000/- towards transport charges; Rs.15,000/- towards extra nourishment; Rs.3,000/- towards attendant charges and Rs.15,000/- towards pain and suffering and Rs.7,680/- towards partial permanent disability, making a total compensation of Rs.60,680/-. The Tribunal, while mentioning that the petitioner contributed to the accident to the extent of 25%, deducted proportionate amount from Rs.60,680/- and, though, worked out the remainder Rs.45,510/-, still, strangely, in paragraph No.23, mentioned the entitlement amount as Rs.30,680/-.

9. Challenging the same, the present appeal is preferred by the petitioner mentioning the said aspect, besides agitating the grounds that the amounts granted by the Tribunal are meager and sought to grant balance amount.

10. Heard Sri B. Venkat Reddy, learned counsel for the appellant - petitioner. Despite service of notice, none appears for respondent Nos.1 and 2.

11. So far as contributory negligence to the extent of 25% attributed to the petitioner is concerned, the finding recorded by the Tribunal does not warrant any interference for the reason that it is based on appreciation of evidence by assessing the evidence of RW.1 and PWs.1 and 3. However, concerning the amounts determined by the Tribunal, the petitioner sustained four injuries, among which, the fourth injury is a grievous injury. Ex.A-5 would show that he was admitted on 18-09-2002 and discharged on 28-09-2002. He was treated for closed fractures of both bones of right leg upper 1/3rd. As seen from Ex.A-6, he had also undergone further treatment in Deccan College of Medical Science and he has filed Exs.A-9 to A-43 showing the amounts he expended towards purchase of medicines and surgicals. The Tribunal granted Rs.15,000/- which amount is claimed by the petitioner towards extra nourishment and

medicines. The same is maintained. Towards pain and suffering, the Tribunal granted Rs.15,000/-, which is over and above Rs.12,000/- claimed by him. Therefore, the same is also maintained.

12. Towards partial permanent disability, though, the claim was laid at Rs.89,000/-, the Tribunal granted Rs.7,680/-, taking the age of the injured as 60 years, applying multiplier '8' and taking the monthly salary at Rs.1200/- by also deducting 1/3rd there-from, which is not correct since it is a case of injuries but not a claim for compensation in relation to death. Even for non-earning person, the notional income is fixed at Rs.15,000/- per annum as per Schedule-II to Section 163-A of the Act. Therefore, taking Rs.15,000/- as the annual income, the relevant multiplier '9' in view of the decision of the Hon'ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation**^[1] as the petitioner was aged 60 years, when assessed, it works out to Rs.1,35,000/- [Rs.15,000/- x 9], and 10% of it towards disability, works out to Rs.13,500/- and, accordingly, the same is granted as against Rs.7,680/-.

13. Concerning temporary loss of earnings, the amount of Rs.6,000/- granted is enhanced to Rs.7,500/- keeping in view, the petitioner would have suffered for six

months to pursue his normal activities. The Tribunal also granted a sum of Rs.2,000/- towards transport charges and Rs.3,000/- towards attendant charges, the same are also maintained. Thus, the total amount works out to Rs.56,000/-. Since 1/4th has to be deducted towards 25% negligence attributed to the petitioner towards contribution to the accident which works out to Rs.14,000/- and when the same is deducted, the balance amount of Rs.42,000/- is the compensation to which the petitioner is entitled as against the amount of Rs.30,680/- granted by the Tribunal.

14. So far as the rate of interest is concerned, the Tribunal has granted 9% per annum. While maintaining the same rate on the amount of Rs.30,680/- granted by the Tribunal, the interest at 7.5% per annum is granted on the enhanced amount of Rs.11,320/- as per the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others** [\[2\]](#).

15. In the result, the appeal is allowed in part, and the order and decree, dated 03-02-2005, in O.P. No.2105 of 2002, passed by the Tribunal are modified enhancing the compensation to Rs.42,000/- (Rupees forty two thousand) from Rs.30,680/- with interest @ 9% per annum on the amount of Rs.30,680/- (Rupees thirty thousand six

hundred and eighty) granted by the Tribunal and at 7.5% per annum on the enhanced amount of Rs.11,320/- (Rupees eleven thousand three hundred and twenty) from the date of petition till realization. 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 15, 2016.

Mgr

[\[1\]](#). (2009) 6 Supreme Court Cases 121

[\[2\]](#). 2013 ACJ 1403