

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1067 OF 2009

JUDGMENT:

Seeking enhancement of compensation on the grounds that the amount granted by the Tribunal is very meager and that no liability was fastened on Insurance Company - respondent No.2, the present appeal is preferred by the petitioner under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act').

2. By the order, dated 28-11-2008 in O.P. No.948 of 2006, on the file of the Chairman, Motor Accident Claims Tribunal - cum -

I Additional District Judge at Nalgonda (for short 'the Tribunal')

a sum of Rs.32,500/- was granted as compensation with interest at 7.5% per annum as against Rs.1,00,000/- claim laid under Sections 163-A and 166 read with 140 of the Act.

3. The appellant herein is the petitioner, while respondent Nos.1 and 2, who are owner and insurer of auto-rickshaw bearing registration No.AP 24AD/TR 5593, respectively, are respondents as such, in the OP before the Tribunal.

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

5. Since there would not be any chance for respondent No.2 - insurer to file any appeal as no liability was fastened on it. Respondent No.1, owner of the auto-rickshaw, remained *ex parte* before the Tribunal and the manner in which the accident had taken place is not in dispute.

6. Heard Sri P.S.P. Suresh Kumar, learned counsel for the appellant - petitioner, and Sri G. Sekhar Reddy, learned counsel for respondent No.1 and Sri V. Mohan Srinivas, learned counsel for respondent No.2 - Insurance Company.

7. The only short question that arises for determination is, whether the amounts awarded by the Tribunal can be construed as fair and adequate for the injuries sustained by the petitioner; and whether any liability can be fastened on respondent No.2 - Insurance Company in view of the argument advanced by the learned counsel for the appellant - petitioner that the policy was, in fact, taken even prior to the date of accident.

8. So far as the exemption of liability of the

Insurance Company is concerned, it is clear from Ex.B-1 - insurance policy, it would come into force from 19-09-2006 and ends by 18-09-2007. It is not in dispute that the accident had taken place on 03-09-2006. In that view of the matter, the Tribunal has recorded a finding that no liability can be fastened on the Insurance Company. That finding recorded by the Tribunal is based on the contract between the parties i.e., insured and insurer. Therefore, no liability arises on the Insurance Company to indemnify the insured and to pay compensation to the petitioner when accident takes place before the commencement of the policy period.

9. So far as the amounts granted by the Tribunal are concerned, the Tribunal granted Rs.25,000/- towards injuries and a sum of Rs.3,000/- towards medical expenses. The injuries sustained by the petitioner are: i) abrasion over right chest; ii) fracture of right lower end of radius; iii) fracture of 5th metacarpal bone; and iv) laceration over left parietal region of scalp. The said amounts granted by the Tribunal towards injuries and the medical expenses are maintained. Even the amount of Rs.4,500/- granted by the Tribunal towards temporary loss of earnings.

10. The Tribunal has not granted any amount towards pain and suffering. Therefore, a sum of

Rs.15,000/- can be granted as it is reasonable as there had been two fractures described as injury Nos.2 and 3. Towards extra nourishment, a sum of Rs.5,000/- is granted. Towards transport charges, a sum of Rs.2,000/- is granted. Thus, the petitioner is entitled to Rs.54,500/- as compensation as against the amount of Rs.32,500/- granted by the Tribunal.

11. The interest granted by the Tribunal at 7.5% per annum is maintained, so also on the enhanced amount in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**^[1].

12. In the result, the appeal is allowed in part, and the order and decree, dated 28-11-2008, in O.P. No.948 of 2006, passed by the Tribunal are modified enhancing the compensation to Rs.54,500/- (Rupees fifty four thousand and five hundred) from Rs.32,500/- with interest at the rate of 7.5% per annum thereon 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

August 10, 2016.

Mgr

[\[1\]](#). 2013 ACJ 1403