

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.CMA.No.1636 OF 2009

JUDGMENT:

The present appeal is preferred by the petitioner in O.P.No.117 of 2003 on the file of Chairman, Motor Accidents Claims Tribunal – cum – District Judge, Nizamabad, having not satisfied with the award of Rs.2,00,845/- as compensation by order and decree, dated 30.06.2006, passed in the said O.P., as against the claim of Rs.5,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988, for the injuries sustained by him in a road accident, and therefore, seeks to enhance the compensation on the ground that the compensation granted by the Tribunal was meagre and not just and adequate.

2. The fact situation occurring in the instant case is not in dispute.

3. Heard Sri Ch. Janardhan Reddy, learned counsel for the appellant, and Sri Sriman, learned counsel for respondent No.2. Though, service was completed on respondent No.1, owner of the tanker, none appears for him.

4. The short question involved in the instant appeal is whether the appellant is entitled to enhancement of compensation?

5. PW.2 is the Medical Officer, who treated the appellant besides other Doctors working in Yashoda Hospital, whose names have been mentioned by him and recorded by the Tribunal in paragraph No.20 of the order under challenge. PW.2, though, asserted in his chief examination that the appellant sustained multiple fractures to facial bones i.e., right frontal bone, zygoma, maxilla, orbital bone and mandible, residual disfiguration of the face and derangement in oral cavity, on account of which, he would have difficulty in chewing leading to inadequate intake of food, and was expressing excessive watering of the right eye leading to vision problem and underwent surgical intervention on 17.01.2003, which was open reduction fixation by plates and screws under general anesthesia, and discharged on 24.01.2003, and that he needs another operation for correction of residual deformities of the face and mouth, which costs approximately Rs.70,000/-, but the answers in his cross examination would constitute focal point, on which much reliance has been placed by the learned counsel for respondent No.2 pointing out that when the appellant last visited PW.2 on 31.01.2003, he advised the appellant to stop all drugs from 02.02.2003 having removed loose wires and basing on Ex.A4 contents, he asserted that there was no residual disfiguration of the face and no derangement in the oral cavity of the mouth and that the appellant did not complain excessive watering from the right eye and all the fractures were united. In view of these answers given by PW.2,

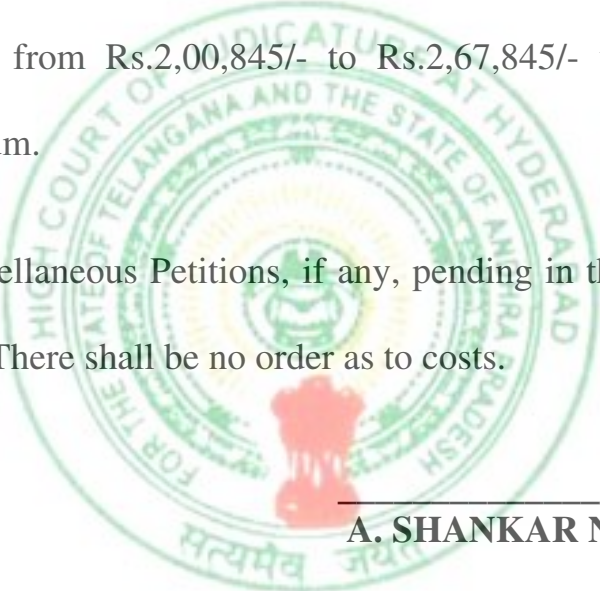
whom the appellant himself has examined in order to substantiate the medical procedures he had undergone, in which case, it is difficult to construe that the appellant did sustain partial permanent disability. Even otherwise, the amounts granted by the Tribunal at Rs.1,00,000/- towards disability, Rs.50,000/- towards pain and suffering, Rs.41,845/- towards medical expenses, as per Exs.A7 and A8, which are medical bills, are maintained, as they are reasonable and based on appreciation of evidence on record, but, however, for further surgical intervention undergone by the appellant on 31.01.2003, it appears that no claim was made towards medical expenses. Therefore, in view of the evidence of PW.2, an amount of Rs.40,000/- is granted towards the same.

6. Towards loss of temporary earnings, the Tribunal has granted Rs.9,000/-, at the rate of Rs.3,000/- per month for three months, treating that the appellant would have taken three months to regain normalcy, but when looked at the injuries sustained by the appellant to the frontal region, which details are mentioned in the above, six months period would have taken for the appellant to regain normalcy. Hence, the amount of Rs.9,000/- granted by the Tribunal is doubled covering the period of six months. Therefore, Rs.18,000/- is granted towards loss of temporary earnings. The Tribunal has not granted any amount towards extra nourishment. Therefore, a sum of Rs.10,000/- is granted. Towards attendant charges and transport charges, no amounts

were granted by the Tribunal. Put together, a sum of Rs.8,000/- is granted. Thus, the petitioner is totally entitled to Rs.2,67,845/- as against Rs.2,00,845/- granted by the Tribunal. The rate of interest granted by the Tribunal at 7.5% per annum is on par with the decision of the Honourable Supreme in **Rajesh and others v. Rajbir Singh and others**¹. Hence, the same is maintained on the enhanced amount also.

7. Accordingly, the appeal is allowed in part enhancing the compensation from Rs.2,00,845/- to Rs.2,67,845/- with interest at 7.5% per annum.

8. Miscellaneous Petitions, if any, pending in this appeal, shall stand closed. There shall be no order as to costs.



A. SHANKAR NARAYANA, J

September 02, 2016.
MD

¹ (2013) 9 SCC 54