

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.CMA.No.1445 OF 2009

JUDGMENT:

Dissatisfied with the award of Rs.25,000/- as compensation by order and decree, dated 13.08.2004, passed in O.P.No.1425 of 2002 on the file of Chairman, Motor Accidents Claims Tribunal – cum – IV Additional District and Sessions Judge (Fast Track Court), Nizamabad, as against the claim of Rs.2,00,000/- laid under Section 166 (1) (a) of the Motor Vehicles Act, 1988 (for short, 'the Act'), the petitioner in the said O.P. preferred the instant appeal, under Section 173 of the Act, seeking enhancement of compensation.

2. The fact situation relating to the manner in which the accident had occurred is not in dispute, though counter was not filed by the Insurance Company opposing the claim of the appellant sustaining one grievous injury, that being fracture to the right foot metatarsal bone, loss of skin over that part and undergoing surgical intervention and skin grafting, as could be seen from Ex.X1.

3. Heard Sri P. Radhive Reddy, learned counsel for the appellant, and Smt. S.N. Padmini, learned counsel for respondent No.2 – Insurance Company.

4. Respondent No.1, though, served with notice,

none appears for him.

5. The Tribunal, on issue No.1, recorded a finding in favour of the appellant. On issue No.2, having examined the contents in Ex.X1 showing that on 08.05.2002, the petitioner underwent operation and skin grafting, but he did not sustain any fracture, and the contents in Exs.A2 and A4, would refer petitioner sustaining fracture to right foot metatarsal bone, but do not indicate on which of the metatarsal bone the fracture had occurred, excluded Exs.A2 and A4 from the purview of appreciation, and just basing on the contents in Ex.X1, awarded Rs.25,000/- as compensation.

6. Learned counsel for the appellant would contend that, though, Ex.A2 – Wound Certificate issued by the Government Hospital, shows that there is fracture of right foot metatarsal bone, the Tribunal treating the same as grievous injury, granted Rs.5,000/- towards such injury, which is on lower side, including the amount of Rs.10,000/- granted towards pain and suffering and the other amount of Rs.10,000/- granted towards incidental charges, including medical expenses.

7. It is clear from Ex.A2 that it was issued by PW.2. This Court, earlier given certain directions to the Tribunals at Nizamabad not to give any credence to the Certificates issued by PW.2 and yet another Doctor from that place.

Therefore, the Tribunal has rightly excluded Ex.A2 – Wound Certificate as well as Ex.A4 - Disability Certificate.

8. Though Ex.X1 does not disclose fracture, still, keeping in view, the fact that the Tribunal rendered finding that the injury was grievous in nature and that the appellant was admitted in the Government Hospital on 23.04.2002 and discharged on 15.05.2002, the amount of Rs.10,000/- granted towards medical expenses is enhanced to Rs.20,000/-, by maintaining the other amounts granted towards injury, and pain and suffering. Thus, the appellant is entitled to Rs.35,000/- as against Rs.25,000/- awarded by the Tribunal.

9. The interest awarded by the Tribunal at 9% per annum is maintained on the amount of Rs.25,000/- awarded by the Tribunal and on the enhanced amount of Rs.10,000/-, interest is awarded at 7.5% per annum, in view of the decision of the Honourable Supreme Court in **Rajesh and others v. Rajbir Singh and others**^[1].

10. Accordingly, the appeal is allowed in part enhancing the compensation from Rs.25,000/- to Rs.35,000/- with interest at 9% per annum on the amount of Rs.25,000/- awarded by the Tribunal and at 7.5% per annum on the enhanced amount of Rs.10,000/-.

11. Miscellaneous Petitions, if any, pending in this

appeal, shall stand closed. No costs.

A. SHANKAR

NARAYANA, J
August 08, 2016.
MD

[\[1\]](#) (2013) 9 SCC 54