

**HON'BLE SRI JUSTICE A. SHANKAR**

**NARAYANA**

**M.A.C.M.A. No.1233 OF 2005**

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**JUDGMENT:**

Dissatisfied with the award of Rs.42,000/- as compensation by the order and decree, dated 14-02-2005, in M.V.O.P.90 of 2000, on the file of the Chairman, Motor Accidents Claims Tribunal - cum - VII Additional District Judge (Fast Track Court), Nizamabad at Bodhan (for short 'the Tribunal'), 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') read with Rule 455 of Andhra Pradesh Motor Vehicles Rules, 1989, the instant appeal is preferred by the petitioner under Section 173 of the Act, seeking enhancement of compensation.

2. The appellant herein is the petitioner in M.V.O.P. before the Tribunal while respondent Nos.1 and 2, who are owner and insurer of Jeep bearing registration No.MGST-1514, respectively, are respondent Nos.1 and 2, respectively.

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

4. The facts, in brief, are that on 10-10-1999 at

about

1.00 p.m., the petitioner, who was a 14 year boy on that day, working as labourer, was proceeding on his bicycle from Banswada towards Koyyagutta, and when he reached old Court area of Banswada on Banswada – Nizamsagar road, a jeep bearing registration No.MGST-1514 driven by its driver in a rash and negligent manner at high speed came from opposite direction and hit him, due to which, he sustained fracture to his left leg femur bone and also injuries on other parts of his person.

i) He was immediately shifted to Government Hospital, Banswada and from there to the Government Headquarters, Nizamabad. Later, he was treated by Dr.L. Ramulu, Dr. T. Narsing Rao and Dr. Srinivas, who are Orthopedic Surgeons. According to him, he spent Rs.80,000/- towards medicines and, therefore, he laid the claim for Rs.2,00,000/- against respondent Nos.1 and 2, who are owner and insurer of the jeep respectively.

5. Respondent No.1, owner of the vehicle, remained *ex parte* before the Tribunal.

6. Respondent No.2 - Insurance Company opposed the claim by filing counter.

7. On the basis of the pleadings, the Tribunal framed three issues about fixing the responsibility for the

accident.

8. During inquiry before the Tribunal, to substantiate the claim of the petitioner, his father as next friend examined himself as PW.1 and also examined Dr.L. Ramulu as PW.2, who issued disability certificate as in Ex.A-8 and marked Exs.A-1 to A-9. On behalf of respondent No.2, no witnesses were examined, but a copy of insurance policy was marked as Ex.B-1 on mutual consent.

9. The Tribunal, on issue No.1, on appraisal of evidence, held it in favour of the petitioner. On issue No.2, the Tribunal having considered the evidence of PW.1, medical evidence, mainly, basing on Ex.A-9, which reflects that the petitioner was admitted in Government Headquarters Hospital at Nizamabad on 10-10-1999 and undergone surgical intervention for the left shaft femur on 25-10-1999, and he was discharged on 04-11-1999, granted a sum of Rs.25,000/- towards fracture injury including pain and suffering; Rs.5,000/- towards medical expenses; Rs.5,000/- towards transport and attendant charges; Rs.2,000/- towards extra nourishment; and Rs.5,000/- towards loss of temporary earnings and, thus, a total sum of Rs.42,000/- as compensation with interest at 9% per annum thereon.

10. It is the aforesaid order which is under challenge in the instant appeal preferred by the petitioner contending in the grounds that the Tribunal has not properly appreciated the evidence on record which resulted in ignoring the evidence of PW.2 and the disability certificate, and even the interest at 12% per annum ought to have been granted instead of 9% per annum and, therefore, sought to grant balance amount.

11. Heard Sri P. Radhive Reddy, learned counsel for the appellant. No representation for respondent Nos.1 and 2.

12. Perused the order and evidence on record, both, oral and documentary, let in by the parties.

13. At the outset, it has to be observed that the Tribunal has assigned cogent reasons for excluding the evidence of PW.2 and the disability certificate issued by him marked as Ex.A-8 in paragraph No.10, wherein the observations of this Court against the said doctor were extracted. Therefore, that finding recorded by the Tribunal in rejecting the disability certificate and the evidence of PW.2 does not warrant interference.

14. Concerning whether the amount awarded by the Tribunal is just and reasonable, as seen from the evidence on record, the petitioner was admitted as in-

patient on 10-10-1999 and discharged on 04-11-1999. He had also undergone surgical intervention on 25-10-1999 for left shaft femur. Thus, when kept in view, certainly, the petitioner is entitled to enhancement on the amounts granted by the Tribunal. Concerning the injury and pain and suffering as such, the Tribunal has granted Rs.25,000/- which is enhanced to Rs.35,000/- keeping in view that the injury was to his one of the main limbs which certainly, would have disabled him from mobility for a considerable period. Concerning the amount of Rs.5,000/- granted by the Tribunal towards medical expenses, the same is maintained in the absence of any concrete evidence on record to prove that the petitioner really spent such and such amount while he was treated in Government Hospital. The amount of rs.5,000/- granted by the Tribunal towards transport and attendant charges is enhanced to Rs.10,000/- put together. The amount of Rs.2,000/- granted by the Tribunal towards extra nourishment is enhanced to Rs.5,000/-. The amount of Rs.5,000/- granted by the Tribunal towards loss of temporary earnings is enhanced to Rs.10,000/- keeping in view that at least for six months the petitioner would not have been able to attend to his labour profession. Thus, in all, the petitioner is entitled to Rs.65,000/- (Rupees sixty five thousand) as against the amount of Rs.42,000/- granted by the Tribunal.

15. Concerning rate of interest, the Tribunal has granted the same at 9% per annum and the same is not disturbed on the amount awarded by the Tribunal.

However, on the enhanced amount of Rs.23,000/-, interest is granted at the rate of 7.5% per annum from the date of petition in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**<sup>[1]</sup>.

16. In the result, the appeal is allowed in part, and the order and decree, dated 14-02-2005, in M.V.O.P. No.90 of 2000, passed by the Tribunal, are modified, enhancing the compensation to Rs.65,000/- (Rupees sixty five thousand) from Rs.42,000/- with interest at the rate of 9% per annum on the amount of Rs.42,000/- granted by the Tribunal and at the rate of 7.5% per annum on the enhanced amount of Rs.23,000/-(Rupees twenty three thousand) from the date of petition till realization. There shall be no order as to costs.

17. As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

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**A. SHANKAR NARAYANA, J**

**February 26, 2016.**

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