

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.1598 OF 2005

AND

CROSS OBJECTIONS (Sr) No.5653 OF 2006

COMMON JUDGMENT:

The instant appeal, under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), is preferred by respondent No.1 - Insurance Company in O.P.No.848 of 1999 on the file of Chairman, Motor Accidents Claims Tribunal – cum – District Judge, Nizamabad, aggrieved by the order and decree, dated 10.10.2002, in the said O.P., whereby and whereunder, a sum of Rs.1,00,000/- was granted towards compensation with interest at 9% per annum.

2. The appellant is respondent No.2, whereas respondent No.1 is the petitioner and respondent No.2 is the owner of the Tractor bearing registration No.AP-25-E-8040 in the O.P. before the Tribunal.

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

4. The facts would show that on 05.09.1999, while the petitioner was travelling in the Jeep bearing registration No.AAJ-9664 from Bheemgal towards Gongopula side, at about 9:00 PM, when the jeep

reached Bada Bheemgal Village, a Tractor bearing registration No.AP-25-E-8040 driven by its driver in a rash and negligent manner at high speed coming in wrong side, hit against the jeep, due to which the petitioner sustained injuries on nose, head and other parts of the body. Immediately after the accident, he was shifted to Government Hospital, Nizamabad, where he was treated by Dr. L. Ramulu and

Dr. T. Narsing Rao, Orthopaedic Surgeons, and thereafter, continued his treatment in private hospitals at Nizamabad and Bheemgal. Claiming that he was earning Rs.80,000/- per month out of agricultural produce and barber work, and on account of fracture injuries sustained by him, he is unable to do any work, and had spent Rs.50,000/- towards medicines, treatment and for extra nourishment, laid claim under Section 166(1)(a) of the Act read with Rule 455 of A.P. Motor Vehicles Rules, claiming compensation of Rs.1,80,000/-.

5. Respondent No.1 – owner of the Tractor remained *ex parte* and respondent No.2 – Insurer filed written statement opposing the claim petition.

6. Basing on the above pleadings, the Tribunal framed the following two issues:

“1) Whether the petitioner is entitled to compensation sought for?

2) To what relief the petitioner is entitled to?”

7. During enquiry, the petitioner besides examining himself as P.W.1, got examined Dr. K. Laxminarayana as P.W.2 and marked Exs.A.1 to A.9 besides marking Ex.C.1 Disability Certificate issued by PW.2, on commission. On behalf of respondent No.2 – insurer, no evidence, either oral or documentary, was let in.

8. On appraisal of evidence and the material on record, the Tribunal held issue No.1 in favour of the petitioner. On issue No.2, the Tribunal, basing on the evidence of P.W.2 and the contents in Ex.A3 – certified copy of wound certificate issued by Government Hospital, Nizamabad, having recorded a finding that the petitioner had undergone surgery on 07.09.1999 for fracture of nasal bone with gross deformity, granted compensation of Rs.1,00,000/- holding that respondent Nos.1 and 2 are jointly and severally liable to pay the same with proportionate costs and interest at 9% per annum from the date of petition till realisation.

9. It is the aforesaid order which is under challenge in the instant appeal by the insurance company contending in the grounds of appeal that granting compensation of Rs.1,00,000/- for fracture of nasal bone is excessive and arbitrary and, therefore, sought to set aside the order and decree passed by the Tribunal. Seeking enhancement of compensation, petitioner filed cross objections.

10. During the course of arguments, learned counsel for the appellant, of course, has not insisted on reduction of quantum of compensation awarded by the Tribunal in view of the change in decisional law, but, however, he requested that the interest may be reduced from 9% per annum to 7.5% per annum in view of the decision of the Honourable Apex Court in **Rajesh and others v. Rajbir Singh and others**^[1].

11. The submission of the learned counsel for appellant is reasonable and therefore, while maintaining the quantum of compensation awarded by the Tribunal, interest is reduced from 9% per annum to 7.5% per annum.

12. Accordingly, the instant appeal is partly allowed and the cross objections (Sr) No.5653 of 2006 stands dismissed. There shall be no order as to costs.

13. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal shall stand disposed of.

A. SHANKAR

NARAYANA, J

April 07, 2016.

MD

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