

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.1313 OF 2005

JUDGMENT:

Feeling dissatisfied with the award of Rs.1,10,000/- as compensation, as against the claim of Rs.2,50,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), by order and decree, dated 25.04.2005, in O.P.No.456 of 2000 on the file of Chairman, Motor Accidents Claims Tribunal – cum – II Additional District Judge, Ranga Reddy District, the instant appeal is preferred seeking enhancement of compensation by the petitioner.

2. The appellant is the petitioner, whereas respondent Nos.1 and 2, who are the owner and insurer of the offending vehicle, are respondent Nos.1 and 2 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 10.12.1999 at about 03:00 PM, while the petitioner was proceeding in an Auto bearing registration No.AP-13-V-2626 from Mehdipatnam towards Shankerpally and when the Auto reached near Miyakhanguda Village, since the driver of the Auto drove it

in a rash and negligent manner and lost control over it, the Auto turned upside down, due to which, the passengers therein fell down and sustained injuries. According to the petitioner, he was immediately shifted to Osmania General Hospital, Hyderabad and having given first aid, he was referred to Nizams Institute of Medical Sciences (NIMS) hospital, where he had undergone treatment till 11.01.2000, during which time, he had undergone surgical intervention, and again he was admitted on 02.02.2000 and underwent treatment as inpatient till 03.09.2004. The petitioner, claiming that he has spent huge amount towards medical expenses, sought a sum of Rs.2,50,000/- as compensation. Initially, though the petitioner had laid claim for Rs.1,50,000/-, by way of amendment, it was enhanced to Rs.2,50,000/-.

5. Before the Tribunal, respondent No.1 remained *ex parte*, whereas respondent No.2 – Insurance Company contested the claim.

6. Based on the said pleadings, in the direction of accounting for responsibility about the accident, the Tribunal has framed three issues. During enquiry, petitioner besides examining himself as PW.1, examined one Dr. P. Chandra Shaker as PW.2 and marked Exs.A1 to A7 and also got summoned case sheets, three in number, marked as Exs.X1 to X3 to substantiate the claim laid. On behalf of respondent No.2, no witnesses were

examined, but a copy of the policy was marked as Ex.B1 on consent.

7. The Tribunal, having found favour with the petitioner on issue No.1, taking into consideration the evidence, both, oral and documentary, let in by the petitioner, granted a sum of Rs.49,000/- towards medical expenses, while discarding the estimation given by the NIMS hospital, which amounts to Rs.63,000/- under Ex.A6 on the premise that the said amount cannot be construed as having been spent by the petitioner, and taking the age of the petitioner as 20 years and disability at 20% from the certificate issued by the Medical Board marked as Ex.A5 and fixing the annual income at Rs.15,000/- notionally, as per the second schedule to Section 163A of the Act, granted a sum of Rs.48,000/- towards loss of earning capacity, besides granting Rs.3,000/- towards transportation and attendant charges and Rs.10,000/- towards pain and suffering, thus, totalling to a sum of Rs.1,10,000/- with interest at 9% per annum from the date of petition till realisation.

8. It is the aforesaid order which is under challenge in the instant appeal on the ground that the Tribunal granted a very meagre amount, which cannot be treated as just and adequate compensation in terms of Section 168 of the Act and therefore, sought to grant the balance

amount.

9. Heard Sri B. Parameswara Rao, learned counsel for the appellant and Sri P. Harinath Gupta, learned counsel for respondent No.2. In the cause title, the appellant has endorsed that respondent No.1 is not a necessary party to this appeal.

10. Perused the order under challenge and the evidence on record, more particularly, the evidence of PW.2, who figured as one of the signatories to the disability certificate and spoken about the treatment PW.1 had undergone and also expressing that there has been shortening of the limb to an extent of one inch.

11. The evidence of PW.2 would show that the petitioner sustained the following four injuries:

- “1. Grade III B compound
subtrochanteric
fracture of left femur (Thigh bone).
2. Abrasion on the both parietal
regions
(Head injuries)
3. Fracture right clavicle.
4. Abrasions on right shoulder, right
ankle.”

It also shows that PW.1 was operated on 13.12.1999 and debridement and rush nailing was done and discharged on 11.01.2000 with an advice to come back after six weeks. Thereafter, PW.1 was again admitted on

02.02.2000 with infection to the left thigh and hip joint and was operated on 03.02.2000, and rush nail removal, joint debridement and external fixator was done and discharged on 21.03.2000 with an advice to come back after four weeks. He was readmitted on 16.08.2004 with a discharging sinus (bone infection) and was operated on 23.08.2004 and removal of dead bone was undertaken and discharged on 03.09.2004. There has been shortening of left lower limb joint and especially limping while walking. No doubt, PW.2 was cross-examined, but nothing useful to prove the case of the Insurance Company is forthcoming. When, kept in view, these events, certainly, the Tribunal ought not to have discarded the amount of Rs.63,000/- claimed towards medical expenses basing on the admission given by the Doctors of NIMS hospital and therefore, the said amount was granted. So far as Rs.48,000/- granted by the Tribunal towards loss of future earning capacity on account of partial permanent disability is concerned, the same is maintained. However, towards transportation and attendant charges, the amount of Rs.3,000/- granted by the Tribunal is enhanced to Rs.10,000/-. The amount of Rs.10,000/- granted towards pain and suffering is enhanced to Rs.20,000/-, keeping in view, the sufferance the petitioner has undergone. Towards extra nourishment, an amount of Rs.10,000/- is granted. Thus, the petitioner is entitled to a total sum of Rs.2,00,000/-. The interest

awarded by the Tribunal at 9% per annum is maintained on the original amount of Rs.1,10,000/- awarded by the Tribunal and on the enhanced amount, the petitioner is entitled to interest at 7.5% per annum from the date of petition till realisation, as per the decision of the Honourable Apex Court in **Rajesh and others v. Rajbir Singh and others**^[1].

12. Accordingly, the instant appeal is allowed in part. 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