

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A. C.M.A. No.1307 OF 2009

JUDGMENT:

On the ground that a meager amount of Rs.22,000/- was granted as compensation by the learned Chairman, Motor Accidents Claim Tribunal - cum - I Additional District Judge, Chittoor (for short 'Tribunal'), by the order and decree, dated 24.11.2004, in M.V.O.P. No.6 of 1999, as against his claim of Rs.2,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), petitioner preferred the instant Civil Miscellaneous Appeal, under Section 173 of the Act, seeking enhancement of compensation.

2. The appellant herein is petitioner in the O.P. before the Tribunal while respondent Nos.1 and 2, who are owner and insurer, respectively, of the Maxi Cab bearing No.AP-03-U-316 that involved in the accident, are respondent Nos.1 and 2, respectively.

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

4. The facts would show that on 03.09.1995, while the petitioner was riding pillion on TVS-50 Moped bearing No.ADC-6418, driven by one Gangadharam, from Charvaganipalle to Penumur on Chittoor-Penumur Tar Road, at about 10.30 a.m., a Maxi Cab bearing No.AP-03-U-316, driven by its driver in a rash and negligent manner, hit the TVS-50 Moped, due to which, both its rider as well as

the pillion rider i.e., the petitioner, fell down and sustained grievous injuries. The petitioner was initially treated at Government Hospital, Chittoor, and from there he was shifted to C.M.C. Hospital, Vellore, where he was treated as inpatient for seven (7) days. Again, he took treatment in Government Hospital, Chittoor as inpatient for a period of thirty (30) days. Stating that a sum of Rs.15,000/- was spent towards medical treatment, extra-nourishment and attendants charges; due to the fracture and injuries he sustained, he lost one academic year as he became permanently disabled in view of the clot in his brain and fracture to his leg and injury to the right hand and he was not in a position to walk, sit or stand properly without the assistance of his father, sought a sum of Rs.2,00,000/- as compensation. Originally, claim was laid for Rs.50,000/- and thereafter by amending the prayer, the amount was increased to Rs.2,00,000/-.

5. Before the Tribunal, Respondent No.2, insurer, filed counter opposing the claim by raising various pleas and the same was adopted by respondent No.1, owner of the Maxi Cab that involved in the accident, by filing a memo.

6. Based on the pleadings, the Tribunal framed three (3) issues in order to fix responsibility in taking place of the accident and to determine compensation to which the petitioner is entitled.

7. In order to substantiate his claim, petitioner examined his father as PW.1 being his natural guardian who represented the matter as his next friend, himself as PW.2 and Dr. Y. Devadas from the Head Quarters Hospital, Chittoor, as PW.3 to prove the disability recorded under Ex.A-5 issued by the Medical Board assessing the same at 65%. On behalf of the respondents, no witnesses were examined and no documents were filed.

8. The Tribunal, on appraisal of evidence on record, recorded a finding on issue No.1 favouring the petitioner, and, on issue No.2, though, discussed elaborately the evidence of PWs.1 to 3 and Exs.A-4 and A-5 contents, still, without accepting the disability assessed by PW.3, just granted Rs.10,000/- towards pain and suffering, Rs.2,000/- for two contusions on the left frontal and parietal areas and Rs.10,000/- towards treatment, extra-nourishment and attendant's allowance in C.M.C. Hospital, Vellore, making a total sum of Rs.22,000/- towards compensation with interest at 9% per annum.

9. The aforesaid order is under challenge in the instant appeal by the petitioner on the ground that appreciation of evidence on record, both, oral and documentary, adduced by him is totally ignored by the Tribunal and no reasons were assigned as to why the evidence of PW.3 was excluded and Ex.A-5 was discarded, besides raising the ground that the Tribunal did not apply structural formula and it runs contra to what has been laid down by the Hon'ble Supreme Court in

Gundala Mallamma v. Anka Prasad¹ and Deepal Girishbhai Soni v. United India Insurance Company Limited², and, thus, sought to grant the balance amount.

10. Heard Sri T.C. Krishnan, learned counsel for the petitioner (appellant), and Sri N.S. Bhaskar Rao, learned counsel for the insurer.

11. Despite completion of service on respondent No.1, owner of the Maxi Cab that involved in the accident, none appears on his behalf.

12. It is no doubt true, initially, the amount claimed was only Rs.50,000/- and later, it was amended by incorporating Rs.2,00,000/- in place of Rs.50,000/-, but, certainly, the Tribunal appears to have been carried away by the said amendment. In fact, a perusal of the order under challenge, more particularly, the observations made in paragraph Nos.29 to 35 would show that the Tribunal, somehow, deviated in appreciating the evidence on record. Nothing more is required to assess the condition of the petitioner. The contents of Ex.A-4 would suffice, instead of referring to the evidence of PWs.1 and 2, since the evidence of PW.3, the doctor, is only limited to the extent of assessing the disability under Ex.A-5 certificate issued by the District Head Quarters Hospital, Chittoor. The treatment undergone by the petitioner in C.M.C. Hospital, Vellore, the procedures undergone by him are projected in Ex.A-4, thus;

1. 2004 (5) ALD 400

“HISTORY:

12 year old Master Venkatesh alleged to have met with a road traffic accident at approximately 9.30 a.m. on 3/9/95. He lost consciousness and vomited once. No history of seizure or ENT bleeding. No other significant past medical illness. Since the accident he was drowsy moving his limbs but not opening his eyes or responding to commands. He was brought to CMCH Casualty at 12.40 p.m. the same day.

ON EXAMINATION:

Examination revealed a young boy with a BP of 120/80 mmHg and a pulse rate of 96/min. His airway was clear and air entry was equal bilaterally. Examination of the CNS: At admission his His R pupil was 5mm and fixed, the left pupil was 2 mm and reacting both directly and consensually. He was moving the right upper limb less than the left. Right plantar was upgoing. There was abnormal mobility suggesting a fracture lower third of the right femur. There was a 3 cm. laceration on the lateral aspect of the right thigh with the fracture fragment seen through it. There was a laceration over the right heel. Scalp: no injuries seen. Spine normal.

INVESTIGATION:

Hb 11.50% Sodium 139 mEq/L

Potassium 3.3 mEq/L

S. Creatinine 0.6 mg%

Chest X ray: normal.

X ray skull: no fracture seen.

X ray Cervical spine: no fracture or dislocation.

X ray right thigh: shows fracture of the lower third of femur.

CT Scan:[At admission] shows evidence of left frontal and parietal contusions with effacement of the ipsilateral ventricles with surrounding edema. No midline shift. There was blood in the left Posterior fossa appears normal.

CT scan [taken 48 hours after admission]: shows evidence of infarction in the left deep ganglionic region with diffuse edema. No parenchyma.”

13. The evidence of PW.3, who examined PW.1 and assessed the disability, even if excluded, the contents of Ex.A-4, as afore extracted, would suffice to grant enhanced compensation.

14. Now the question is whether the petitioner is entitled to enhancement of compensation? or whether the amount granted by the Tribunal is just and adequate?

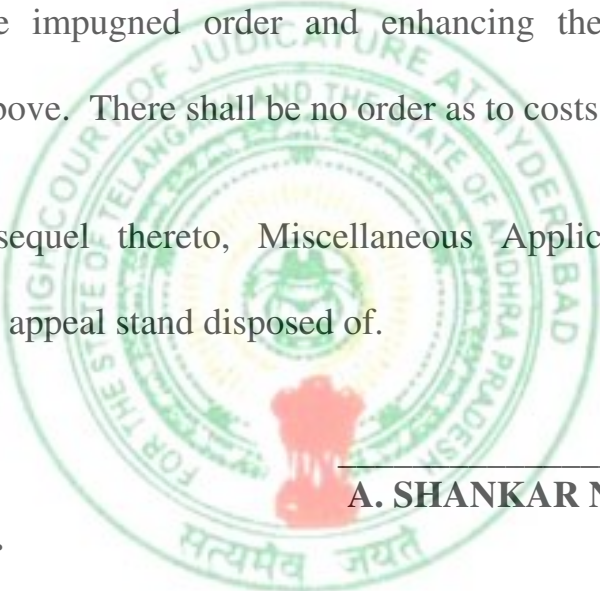
15. It is not as though, that the petitioner has not suffered witnessing one side limbs. It is very clear that in view of the edema that formed in ‘cerebrum’, certainly, the petitioner is entitled to a compensation of Rs.1,50,000/-, as it is difficult to resort to structural formula for want of relevant factors being spoken to by PWs.1 and PW.2

16. Thus, the petitioner is entitled to an amount of Rs.1,50,000/- (Rupees one lakh fifty thousand only) towards

compensation as against Rs.22,000/- granted by the Tribunal and the same is accordingly granted. The rate of interest at 9% per annum, on the compensation of Rs.22,000/- granted by the Tribunal is maintained, however, on the enhanced compensation, it is fixed at 7.5% per annum from the date of petition till realisation, in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**³.

17. Accordingly, the Civil Miscellaneous Appeal is allowed modifying the impugned order and enhancing the compensation, as indicated above. There shall be no order as to costs.

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



A. SHANKAR NARAYANA, J

July 27, 2016.
PV

³ 2013ACJ1403 = 2013(4)ALT35