

HON'BLE SRI JUSTICE A. SHANKAR

NARAYANA

M.A.C.M.A. No.1158 OF 2009

JUDGMENT:

The petitioner having got dissatisfied with the award of Rs.1,65,000/- as compensation as against the claim of Rs.6,50,000/- laid under Section 166 read with 140 of the Motor Vehicles Act, 1988 (for short 'the Act'), by the order and decree, dated 11-08-2006, in O.P. No.1275 of 2002, on the file the Chairman, Motor Accidents Claims Tribunal - cum - I Additional District Judge, Nalgonda (for short 'the Tribunal'), preferred the instant appeal seeking enhancement.

2. The appellant herein is the petitioner, while respondent Nos.1 and 2, who are owner and insurer of autorickshaw bearing registration No.AP 24U 3407, respectively, are respondents as such, in O.P. before the Tribunal.

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

4. Facts of the case, in brief, are that on 22-09-2002, the petitioner was proceeding on Hero Honda Motor Cycle from Palem village, and when he reached bus stage, Palem, at about 7.00 p.m., an autorickshaw bearing

registration No.AP 24U 3407 owned by respondent No.1 and insured with respondent No.2, came in opposite direction driven in a rash and negligent manner at high speed and hit the motor cycle, due to which, he fell down and received serious injuries. Stating that he was earning Rs.6,000/- per amonth as Assistant Secretary in P.A.C.S. and also as LIC Agent and used to contribute the same for the maintenance of family, and on account of the fractures he received, he became disabled and unable to ride motor cycle, sought Rs.6,50,000/- as compensation.

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

6. Respondent No.2 - Insurer, opposed the claim raising various pleas.

7. The Tribunal has framed three issues about the responsibility for accident.

8. During trial, the petitioner himself examined as PW.1, besides examining two of the doctors, who treated him, as PWs.2 and 3, and marked Exs.A-1 to A-13. On behalf of respondent No.2, no witnesses were examined and no documents are filed.

9. On issue No.1, the Tribunal basing on the evidence let in by the petitioner held that the petitioner

contributed to the extent of 50% and, thus, answered the issue holding both the drivers are negligent to the extent of 50% each for taking place of accident.

10. On issue No.2 having analyzed the evidence of PWs.2 and 3 and Exs.A-4 to A-13, granted Rs.1,00,000/- towards permanent disability of 70%; Rs.2,00,000/- towards medical expenses and Rs.30,000/- towards future medical requirement as the petitioner requires one more operation for removal of rods and, thus, arrived at Rs.3,30,000/- and held in view of 50% contribution of the petitioner to the accident, deducted 50% there-from and granted Rs.1,65,000/- with interest at 7.5% per annum thereon.

11. Aggrieved by the aforesaid order, the petitioner preferred the instant appeal contending in the grounds that the Tribunal ought to have granted entire amount; that without there-being any legally acceptable evidence, fastened contributory negligence on him though, the entire negligence ought to have fastened on the driver of auto rickshaw alone; that granting of Rs.2,00,000/- towards medical expenses basing on the evidence of PW.3, the doctor, is not correct and ought to have granted entire amount covered by the bills, amounting to Rs.3,85,189/-.

i) It is also stated that the medical evidence clearly

shows that he sustained fracture of right fore-arm, Grade-III B open fracture of femur with bone loss, fracture of medial tibial condyle right, crush of right foot and amputation of two toes to his left foot and plastic surgery was conducted on his foot and nails were inserted into his femur, right fore-arm and bone grafting surgery was done, and he underwent in-patient treatment on several occasions and also follow up treatment and, thus, there was shortening of right leg by 4" and loss of knee movements and ankle movements and, thus, sustained 70% disability and, therefore, ought to have granted the entire amount sought by him.

12. Heard Sri Chandra Sekhar Reddy Gopireddy, learned counsel for the appellant - petitioner, and Ms. I. Maamu Vani, learned counsel for respondent No.2 - Insurer. Despite service of notice on respondent No.1, owner of the vehicle, none appears.

13. Perused the order and the material on record, both, oral and documentary, let in by the parties.

14. It is to be initially seen;

i. whether the finding recorded by apportioning the liability to the extent of 50% attributing to the petitioner that he contributed to the accident is sustainable?

ii. Further question that requires consideration is, whether the Tribunal was justified in granting Rs.2,00,000/- towards medical expenses overlooking the entire medical bills amount.

iii. Still, further question that requires consideration is, whether the amount of Rs.1,00,000/- granted by the Tribunal towards 70% partial permanent disability can be construed as just and adequate compensation?

15. Touching the first point, the Tribunal examined the issue in paragraph No.5 of the order under challenge. Referring to Ex.A-3, certified copy of charge sheet, the Tribunal observed that in Ex.A-3 the Investigating Officer stated that no scene of occurrence panchanama could be conducted as no incriminating material was found and even there is no mention in the charge sheet about examining the crime vehicle by Motor Vehicle Inspector and his report with regard to the condition of both the vehicles involved in the motor accident, and since the first information report - Ex.A-1's original was issued based on the report given by brother of the injured which clearly shows that the injured was crossing the road from left side to right side, the auto-rickshaw came and hit him from the other side which caused the injuries, fixed the liability to

the extent of 50% holding that the petitioner contributed to the accident. Further observation made by the Tribunal in the said paragraph, in fact, would favour his stand to attribute the entire negligence to the driver of the auto-rickshaw.

i) Perusal of Exs.A-1 to A-3 would clearly show that the driver of the auto-rickshaw was clutched for the offence punishable under Section 338 of IPC in which the petitioner was shown as 'an injured witness'. When the Tribunal was making definite observations that no scene of occurrence panchanama was conducted and no map was drawn and no Motor Vehicle Inspector's report was called for by the Investigating Agency, just basing on the contents of Ex.A-1,

a positive finding ought not to have recorded holding that the petitioner did contribute to the accident and apportioned his contribution to the extent of 50%. Admittedly, it is not a direct collision of two vehicles to apportion the liability to the extent of 50% to each of the drivers. Therefore, the finding recorded by the Tribunal is not sound and not based on proper appreciation of evidence on record and is liable to be set aside and, accordingly, set aside.

16. Touching the second point dealing with medical expenses, the Tribunal observed in paragraph No.6 thus:

“.... Even according to his evidence, discharge bills the total amount paid by the claimant is only Rs.2,00,913/-. The claimant did not examine any of the concerned hospital authorities with regard to the genuineness of those bills and the amounts collected by the hospital authorities from PW-1.”

In fact, the evidence of the doctor examined as PW.3 on commission working in Kamineni Hospitals, L.B. Nagar, Hyderabad, proves the medical bills and, therefore, there is no necessity to examine anybody from Administrative side. In case the doctor who treated him and conducted surgery is not examined, certainly, an obligation is cast on the petitioner to examine any of the staff on administration side to prove authenticity of the bills. Further, the observation of the Tribunal, that even according to the evidence of petitioner the amount paid by him is only Rs.2,00,913/- appears to be on wrong premise. What all PW.1 stated in his chief examination affidavit is that he has spent the amount of Rs.3,00,000/- towards medical expenses, extra nourishment etc. Even, the medical bills amount would far exceed Rs.3,00,000/-. In that view of the matter, certainly, towards treatment, extra nourishment, transport charges and other incidental charges, such as attendant charges, the petitioner is entitled to Rs.3,00,000/- and the same is granted as against Rs.2,00,000/- granted by the Tribunal.

17. Turning to the third point with regard to disability aspect, the evidence of PWs.2 and 3 would show that the petitioner sustained 70% disability and he lost job also. The petitioner filed intimation notice issued by the Income Tax Department marked as Ex.A-11, but it relates to 2000 year. He has not chosen to file income tax returns for the relevant assessment year. The accident had taken place in the month of September, 2002, and the income tax returns for the assesment year 2003-04 ought to have filed by the petitioner, but, he has not chosen to file them for the reasons best known to him as no explanation is forthcoming. He has not examined any one to prove the authenticity of Ex.A-10. Under these circumstances, the Tribunal felt it right in granting 70% towards permanent disability. However, keeping in view, that there has been 4" shortening of his right leg and even keeping in view, the evidence of PW.3 that there would be great inconvenience for PW.1 in his movement, certainly, he is entitled to Rs.50,000/- more, towards partial permanent disability as there is no tangible evidence to apply structural formula. Thus, towards permanent disability, the amount of Rs.1,00,000/- granted by the Tribunal is enhanced to Rs.1,50,000/-. The amount of Rs.30,000/- granted by the Tribunal towards further surgery is maintained. Thus, in all, the petitioner is entitled to Rs.4,80,000/- [Rs.3,00,000/- + Rs.1,50,000/- +

Rs.50,000/-] as compensation as against the amount of Rs.1,65,000/- granted by the Tribunal.

18. In so far as the rate of interest is concerned, the Tribunal has granted it at 7.5% per annum and the same is maintained on the amount granted by the Tribunal and also granted the same on the enhanced amount in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**^[1].

19. In the result, the appeal is allowed in part, and the order and decree, dated 11-08-2006, in O.P. No.1275 of 2002, passed by the Tribunal, are modified, enhancing the compensation to Rs.4,80,000/- (Rupees four lakhs and eighty thousand) from Rs.1,65,000/- with interest at the rate of 7.5% per annum thereon from the date of petition till realization against respondent Nos.1 and 2 jointly and severally. 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.
Mgr

^[1]. 2013 ACJ 1403

