

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.3058 of 2005

JUDGMENT :

The instant Civil Miscellaneous Appeal is preferred by the appellant-petitioner aggrieved by the order and decree dated 30.12.2004 in M.V.O.P.No.247 of 2003 passed by the Judge, Family Court, Secunderabad (for brevity "the Tribunal"), whereby and whereunder a sum of Rs.10,000/- was awarded towards compensation with interest @ 9% per annum, as against the claim of Rs.1,00,000/- made under Section 166 of the Motor Vehicles Act, 1988, for the injuries sustained by him in a motor accident, seeking enhancement of compensation.

2. The appellant herein is petitioner, respondent No.1 is the owner of the offending Car bearing No.AP 10E 4576; and respondent No.2 - Oriental Insurance Company Limited is the insurer in M.V.O.P.No.247 of 2003.

3. For the sake of convenience, in this appeal, the parties are referred to as they are arrayed in M.V.O.P.No.247 of 2003 before the Tribunal.

4. The facts, in brief, are that on 21.04.2002 at about 10.30 hours, the petitioner was proceeding towards Dr. A.S. Rao Nagar from Officers' Colony on a Scooter bearing No.AP 11 7026 as a pillion rider and on reaching the Officers' Colony Cross roads, the driver of the offending Car bearing No.AP 10E 4576, drove the same in a rash and negligent manner and dashed against the said scooter, due to which the petitioner fell down and sustained bleeding injuries all over the body and he was immediately shifted

to Care Poulomi Hospital, Rukmini Colony, Dr. A.S. Rao Nagar, for treatment and from there he was admitted in Apollo Hospital in Anantapur and was treated as an inpatient for three days, that Kushaiguda Police registered a case in Crime No.178/2002 against the driver of the offending Car. The petitioner filed the aforesaid M.V.O.P. claiming a sum of Rs.1,00,000/- towards compensation for the injuries sustained by him.

5. Before the Tribunal, the 1st respondent – owner of the offending Car remained exparte, and the 2nd respondent – Insurer alone contested the claim by raising various grounds in its counter.

6. Basing on the pleadings, the Tribunal framed the following issues for fixing liability and determining the amount of compensation:-

- (1) Whether the petitioner met with accident due to collusion between scooter bearing No.AP 11 7026 and Car bearing No.AP 10E 4576 resulting into injuries to the petitioner?
- (2) Whether the accident did not occur due to the rash and negligent driving of the car bearing No.AP 10E 4576?
- (3) Whether the petitioner is entitled for compensation, if so, to what amount and from whom?
- (4) To what relief?

7. During the course of enquiry, the petitioner himself was examined as P.W.1 and got marked Exs.A-1 to A-6. On behalf of the respondents, none were examined, except marking Ex.B-1, copy of insurance policy.

8. The Tribunal has taken issue Nos.1 and 2 together for discussion and on appraisal of evidence on record, answered both

the issues in favour of the petitioner holding that the accident took place due to negligent driving of car driver. On issue No.3, in order to determine the amount of compensation, taking into consideration the nature of injuries sustained by the petitioner as per Exs.A-4 and A-5, which are medical bills and discharge summary, respectively, the Tribunal has awarded a total sum of Rs.10,000/- towards compensation, while directing the respondents to deposit the said amount within one month from the date of the order, by order and decree dated 30.12.2004.

9. The petitioner has challenged the aforesaid order in the present Civil Miscellaneous Appeal, contending in the grounds of appeal that the compensation awarded is very meagre and the Tribunal has not properly appreciated the evidence on record in granting such amount, that though huge amount was incurred towards medical expenses, the same was not considered in proper perspective, that the Tribunal has not properly appreciated Ex.A.5 – Discharge Summary and the injuries noted therein and, therefore, sought to grant the balance amount by setting aside the impugned order.

10. Heard Sri B. Parameswara Rao, learned counsel for the appellant/petitioner. Despite service of notice, none appeared for 2nd respondent-Oriental Insurance Company Limited. While there is an endorsement that 1st respondent-owner of the Car is not a necessary party. Perused the impugned order and evidence on record, both, oral and documentary.

11. A perusal of Exs.A-4 and A-5, which are Medical bills and Discharge Summary, respectively, show that the petitioner was admitted in Poulomi Hospital and was treated as an inpatient for

three days and the amount shown in Ex.A-4 is Rs.4,662/-, to which the petitioner is entitled and accordingly the same was awarded by the Tribunal. Though it is stated in the impugned order that a sum of Rs.10,000/- was awarded towards compensation, it includes medical expenses also. That apart, the very fact that the petitioner taking treatment as an inpatient for three days would show though he has not sustained any fracture, still keeping in view the pain and suffering undergone by the petitioner, a sum of Rs.20,000/- is granted. As regards other incidental expenses, such as transport charges, attendant charges and extra-nourishment, a sum of Rs.5,000/- is granted. Thus, the petitioner is entitled for a total sum of Rs.25,000/-, which includes the amount of Rs.4,662/- covered by Ex.A.4 – Medical bills. So far as rate of interest is concerned, while maintaining interest granted @ 9% per annum on Rs.10,000/- awarded by the Tribunal, interest @ 7.5% per annum on the enhanced amount of Rs.15,000/- is granted in view of the decision of the Hon'ble Supreme Court in [RAJESH AND OTHERS V. RAJBIR SINGH AND OTHERS](#)^[1].

12. Accordingly, the Civil Miscellaneous Appeal is allowed in part, enhancing the amount of compensation from Rs.10,000/- to Rs.25,000/- (Rupees twenty five thousand only) along with interest @ 9% per annum on Rs.10,000/- as was awarded by the Tribunal and @ 7.5% per annum on the enhanced amount of Rs.15,000/- (Rupees fifteen thousand only) from the date of petition till the date of realisation, and the same shall be apportioned between the respondents in the same proportion as directed by the Tribunal. No order as to costs.

13. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE A. SHANKAR NARAYANA

11.02.2016.

Msr

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.3058 of 2005

11.02.2016
Msr

[\[1\]](#) 2013 ACJ 1403