

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A. C.M.A. No.2652 OF 2005

JUDGMENT:

Dissatisfied with the award of Rs.24,000/- towards compensation as against the claim of Rs.1,00,000/- laid under Sections 163-A, 166 and 140 of the Motor Vehicles Act, 1988 (for short 'the Act'), appellant preferred this Civil Miscellaneous Appeal against the order and decree, dated 07.02.2005, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - II Additional District Judge, Guntur, in O.P. No.1353 of 2002, seeking enhancement of compensation.

2. The appellant herein is the petitioner in the O.P. before the Tribunal, while respondent Nos.1 and 2, who are owner of the Mahindra Van bearing No.AP-37-V-6378 that involved in the accident and its insurer, respectively, are respondent Nos.1 and 2, respectively.

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

4. The facts, in brief, are that on 14-08-2002 at about 4-00 a.m., while the petitioner along with others was proceeding in the auto-rickshaw bearing No.AP-7X-4734 from Kunchanapalli Village to Vijayawada, since driver of the Van (Mahindra) bearing

No.AP-37-V-6378, coming in the opposite direction, driven it in a rash and negligent manner at high speed, near Fire Station, NH-5 Road, Krishna Lanka, Vijayawada, Krishna District, hit the auto-rickshaw, due to which, inmates of the auto-rickshaw sustained injuries including the petitioner and he was shifted to Help Hospital, Vijayawada. Claiming that he has undergone surgical intervention in the Help Hospital, Hyderabad and that he was earning Rs.7,000/- per month by working as Helper in PWD Work Shop at Seetanagaram, Tadepalli Mandal, Guntur District, sought a sum of Rs.1,00,000/- towards compensation.

5 . Respondent No.1, owner of the Van that involved in the accident, remained *ex parte* before the Tribunal.

6. Respondent No.2, insurer of the Van, filed counter opposing the claim by raising various pleas.

7 . The Tribunal framed three (3) issues in order to determine compensation as well as negligence in taking place of the accident.

8. During the course of enquiry, petitioner, besides examining himself as PW.1, examined the doctor, who treated him, as PW.2 apart from marking Exs.A-1 to A-11. On behalf of the insurer, no oral or documentary evidence was adduced.

9. The Tribunal, having found issue No.1 in favour of the petitioner, on issue No.2, granted a sum of Rs.4,000/- towards medical expenses and while discarding 20% disability spoken to by PW.2 and Ex.A-6 certificate issued by him, finding that he sustained a grievous injury of fracture of right ankle malleolus, granted Rs.20,000/- towards

all heads and, thus, granted a total compensation of Rs.24,000/- with interest at 9% per annum.

10. It is the aforesaid order, which is challenged in the instant appeal seeking enhancement of compensation on the ground that the Tribunal did not properly appreciate the evidence on record despite the evidence of PW.2 that steel screws and K-wire are to be removed by performing yet another surgery which requires an amount of Rs.7,000/- to 8,000/- and also the disability spoken to by PW.2 at 20%, and granted meagre sum towards compensation, as such, sought to grant the balance amount.

11. Heard Sri A. Rajendra Babu, learned counsel for the petitioner (appellant), and perused the material available on record.

12. Despite service of notice on respondent Nos.1 and 2, none appears on their behalf.

13. As seen from the evidence of PW.2, who treated the petitioner, and also medical evidence through Ex.A-3, which is wound certificate, it is clear that the petitioner has undergone treatment as inpatient for twelve (12) days and for the right ankle malleolus screws and K-wires were inserted and, admittedly, they were intact by the date of his deposition, but, the Tribunal has granted a total sum of Rs.20,000/- under both special and general damages without reference to each of the heads under which the petitioner is entitled to compensation. When kept in view, the nature of injury sustained by the petitioner as spoken to by PW.2, certainly for fracture injury and pain and suffering, he is entitled to Rs.25,000/-. Towards future surgery, even, in case, the petitioner had already undergone, Rs.8,000/- is awarded. Towards extra-nourishment, a sum of Rs.6,000/- is awarded. As the petitioner has not chosen to file his

salary certificate, towards loss of temporary earnings, a sum of Rs.10,000/- is awarded keeping in view, that he would have been disabled at least for a period of three to four (3 - 4) months from the date of accident. Towards transportation charges, a sum of Rs.3,000/- is awarded. The amount of Rs.4,000/- awarded by the Tribunal towards medical expenses is maintained.

14. Thus, the petitioner is entitled to a total compensation of Rs.56,000/- (Rupees fifty six thousand only) as against Rs.24,000/- awarded by the Tribunal, and the same is accordingly awarded.

The rate of interest on the compensation granted by the Tribunal at 9% per annum from the date of petition till realisation is maintained, however, on the enhanced compensation, it is reduced to 7.5% per annum in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**,

15. Accordingly, the Civil Miscellaneous Appeal is allowed in part modifying the impugned award passed by the Tribunal, by enhancing the compensation, as stated supra. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

January 21, 2016.

PV