

HON'BLE SRI JUSTICE A. SHANKAR

NARAYANA

C.M.A. No.2250 OF 2004

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JUDGMENT:

The instant appeal is preferred by the petitioner having got dissatisfied with the award of Rs.40,000/- as compensation by the order and decree, dated 15-06-1999, in O.P. No.22 of 1997, on the file of the Chairman, Motor Accident Claims Tribunal - cum -

I Additional District Judge, Ranga Reddy District, Saroornagar,

(for short 'the Tribunal') with apportionment of contributory negligence at 70% on respondents and 30% on the petitioner, as against the claim of Rs.2,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), seeking enhancement and also challenging the contributory negligence to the extent of 30% attributed to the petitioner.

2. The appellant herein is the petitioner in O.P. before the Tribunal, while respondent Nos.1 and 2, who are owner and driver of trailer bearing registration No.AAB 1824, respectively, are respondent Nos.1 and 2, respectively.

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 22-03-1996 at about 2.00 p.m., the petitioner herein accompanied by one K. Narasimha Reddy, who also filed claim petition in O.P. No.207 of 1997, which was also disposed of along with O.P. No.22 of 1997 by a common order, dated 15-06-1999, was proceeding on a Scooter from Lalgadi Malakpet driven by the petitioner herein, and when they reached Trimulgherry road opposite F.E.M.E. Military office, a trailer bearing registration No.AAB 1824 was proceeding a head of their scooter with a box on its right side being projected. According to the petitioner, due to uneven road, the said trailer was jumping and in the said process, it hit the handle of the scooter driven by the petitioner, due to which, the petitioner herein and the petitioner in O.P. NO.207 of 1997 fell down and they were taken to Military Hospital and after giving first aid, they were referred to C.D.R. Hospital. The petitioner claiming that he sustained multiple injuries and disability, filed the claim petition seeking

Rs.2,00,000/- as compensation against respondents, who are the General Manager, Ordinance Factory, Project, Yeddumilaram, Sangareddy, Medak District and driver of the trailer, respectively.

5. Both the respondents filed a common counter opposing the claim raising various pleas attributing negligent driving to the petitioner and the manner in which the accident took place as projected by the petitioner and sought to dismiss the claim petition.

6. Based on the pleadings, the Tribunal framed the following three issues about fixing the responsibility for the accident.

“1. Whether the accident is due to rash and negligent driving
of either tractor AAB 1824 or AAP 1825 by its driver?

2. If so what amount the petitioner is entitled and to what
interest?

3. To what relief? ”

7. During inquiry before the Tribunal, the petitioners in the instant case and in other O.P. besides examining themselves as PWs.1 and 2, have also examined Dr. M. Hari Kumar working in CDR Hospital, who treated the petitioner, as PW.3

and exhibited Exs.A-1 to A-18. On behalf of the respondents, respondent No.2 examined himself as RW.1 and marked Ex.B-1, photographs along with negatives.

8. The Tribunal having found issue No.1 partly in favour of the petitioner holding that the petitioner was responsible for taking place of the accident to the extent of 30% towards contributory negligence and the rest of 70% was clutched to the driver of the trailer, who was examined as RW.1. The Tribunal while determining the compensation, granted Rs.15,000/- towards pain and suffering; Rs.15,000/- towards medical expenses and Rs.10,000/- towards loss of earnings and, thus, granted a total sum of Rs.40,000/-. However, the Tribunal directed respondent Nos.1 and 2 are jointly and severally liable to pay 70% only observing that there was contributory negligence on the part of the petitioner also.

9. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that had there been no projection, there would not have been any occasion for taking place of the accident and, therefore, the Tribunal went

wrong in attributing 30% contributory negligence to the petitioner. It is also stated that despite the evidence of PW.3, the Tribunal has not properly appreciated his evidence and even six months bed rest, as advised by the doctor, undergone by the petitioner was not properly considered and only granted Rs.10,000/- which was a meager sum and, therefore, sought to grant balance amount.

10. Heard Sri A.V.K.S. Prasad, learned counsel for the appellant - petitioner. No representation for respondent No.1. It is endorsed in the cause title of memorandum of grounds of appeal that respondent No.2 is not a necessary party.

11. Perused the order and the material on record, both, oral and documentary, let in by the parties, more particularly, the evidence of PW.3 - Medical Officer.

12. One Dr.M. Hari Kumar was examined as PW.3. According to him, he was working in CDR Hospital as Chief Medical Officer and PW.1 was admitted in their hospital on 22-03-1996 at 6.45 p.m. with a lacerated injury over the dorsum of left foot and lacerated wound over the lateral malleolus and fracture over the lateral malleolus,

which injury was grievous. According to him, on 23-03-1996, surgery was done to the ankle of the petitioner, and on 29-03-1996 he was discharged with an advice to attend out-patient ward. He testifies Ex.A-5 issued from their hospital and advising for six months bed-rest. He fairly states in the chief examination that he did not find any disability. He was cross-examined by the respondents, but nothing was brought out to dispute the petitioner undergoing treatment in CDR Hospital for the injuries sustained by PW.1. The Tribunal has granted Rs.15,000/- towards medical expenses, but a perusal of Ex.A-9 - final bill itself would show that he had incurred a total sum of Rs.13,938.06 ps., besides other medical bills issued from CDR Hospital towards casualty charges. The petitioner has submitted estimation statement to a tune of Rs.38,397.56ps., but the amounts paid towards advance appears to have been included. Be that as it may, the petitioner is entitled to Rs.20,000/- since he would have incurred some more amounts towards purchase of medicines keeping in view, the casualty bills also as against Rs.15,000/- granted by the Tribunal.

13. Concerning the injury, the very fact that the petitioner had to take bed-rest for at least six

months, would show that the amount of Rs.15,000/- granted towards pain and suffering requires an enhancement and, therefore, the same is enhanced to Rs.35,000/- towards injury as well as pain and suffering as such. Towards loss of earnings, the Tribunal has granted Rs.10,000/-. The orders issued by the then Engineer-in-Chief (I.W.), Hyderabad, would show that the petitioner was on leave from 22-03-1996 to 02-08-1996 i.e. 4 months 12 days. He also placed salary certificate marked as Ex.A-10 showing his gross salary as Rs.4,490/- and deductions being Rs.1,065/-. Therefore, the petitioner is entitled to Rs.4,490/- per month and, thus, for 4 months 12 days, he is entitled to Rs.19,756/- rounding it off to Rs.19,800/- towards loss of earnings. Towards extra nourishment, the petitioner is entitled to Rs.5,000/-; towards transport charges, he is entitled to Rs.2,000/-; and towards attendant charges, he is entitled to Rs.3,000/-. Thus, in all, the petitioner is entitled to Rs.84,800/- rounding it off to Rs.85,000/- as compensation as against the amount of Rs.40,000/- granted by the Tribunal.

14. So far as the finding recorded by the Tribunal in regard to contributory negligence is

concerned, the same does not warrant interference for the reason that the accident had occurred during broad day-light and the petitioner ought to have taken proper care to avert taking place of the accident. When the amount of Rs.25,500/-, which worked out from Rs.85,000/- towards 30% contributory negligence, is deducted, the petitioner is entitled to Rs.59,500/- as compensation which the respondents are obligated to pay.

15. Concerning rate of interest, the Tribunal has granted the same at 12% per annum and the same is not disturbed on the amount awarded by the Tribunal. However, on the enhanced amount of Rs.31,500/-, interest is granted at the rate of 7.5% per annum from the date of petition till realization in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**^[1].

16. In the result, the appeal is allowed in part, and the order and decree, dated 15-06-1999, in O.P. No.22 of 1997, passed by the Tribunal, are modified, enhancing the compensation to Rs.59,500 (Rupees fifty nine thousand and five hundred) from Rs.28,000/- against respondents

with interest at the rate of 12% per annum on the amount of Rs.28,000/- granted by the Tribunal and at the rate of 7.5% per annum on the enhanced amount of Rs.31,500/- (Rupees thirty five thousand and five hundred) from the date of petition till realization. There shall be no order as to costs.

17. As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA J.

March 21, 2016.

Mgr

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