

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.3441 OF 2005

JUDGMENT:

Having got dissatisfied with the award of Rs.45,000/- as compensation by the order dated 08.12.2004 in O.P. No.490 of 1999 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-VI Additional District Judge (Fast Track Court), Nizamabad (for short, 'the Tribunal') as against the claim of Rs.2,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') r/w Rule 455 of the Rules framed thereunder, for the injuries sustained by the appellant-petitioner in a road accident, the instant appeal is preferred under Section 173 of the Act seeking enhancement of compensation.

2. The appellant herein is the petitioner, while respondent Nos.1 and 2 herein, who are the owner and insurer of tractor bearing registration No.AP 25T 3448, respectively, are respondent Nos.1 and 2, respectively, in the original petition.

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

4. The facts in brief are that on 09.03.1999 at about 5-30 p.m., when the petitioner was proceeding on his bicycle and reached Quilla Chowrastha, a tractor

bearing registration No.AP 25T 3448 driven by its driver in a rash and negligent manner at high speed dashed him, due to which, he fell down and the front wheel of the tractor ran over him causing a fracture injury to his right foot, left leg, head injury, besides other injuries to his person. He was immediately shifted to Government Hospital, Nizamabad, thereafter, treated in Pragathi Nursing Home, Nizamabad and spent Rs.1,00,000/- and, therefore, sought a sum of Rs.2,00,000/- as compensation against respondent Nos.1 and 2, who are owner and insurer of the accident vehicle.

5. Respondent No.1-owner of the accident vehicle remained *ex parte*. Respondent No.2-insurer opposed raising various pleas.

6. Basing on the said pleadings, the Tribunal framed the following issues about the responsibility for the accident:

"1. Whether the petitioner is entitled to compensation sought for?

2. To what relief the petitioner is entitled?"

7. During enquiry, the petitioner examined himself as P.W.1 besides examining the doctor as P.W.2 and marked Exs.A.1 to A.8, Exs.C.1 and C.2 and Exs.X.1 and X.2 to substantiate his claim; whereas, on behalf of respondent No.2, no witnesses were examined and no

documents were filed.

8. On appraisal of evidence on record, both, oral and documentary, let in by the petitioner, held issue No.1 in favour of the petitioner. On issue No.2, so far as the injuries are concerned, the Tribunal has granted Rs.5,000/- towards fracture of fifth metatarsal of right foot, Rs.5,000/- towards fracture of calcanium of right foot, Rs.15,000/- towards probable expenditure including medical bills and taking into consideration of skin grafting, etc., Rs.15,000/- towards deformity of right foot and difficulty while walking and Rs.5,000/- towards loss of education for three months, making a total of Rs.45,000/-. The Tribunal refused to accept the evidence of P.W.2 and Ex.C.1 disability certificate on the ground that it was issued in a private capacity and, thus, allowed the claim petition in part granting Rs.45,000/- with interest at 9% per annum from the date of petition till date of realization making both the respondents jointly and severally liable to pay the compensation.

9. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the compensation granted by the Tribunal is on lower side and the Tribunal was not right in refusing to accept the evidence of P.W.2 and Ex.C.1. It is also stated that the Tribunal despite observing that the petitioner sustained fracture and there has been deformity, still,

granted less amount towards compensation and, therefore, sought to grant balance amount.

10. Heard Sri P.Radhive Reddy, learned counsel for the appellant-petitioner, Sri Ch.Janardhan Reddy, learned counsel for respondent No.1-owner, and Sri Srinivasa Rao Vutla, learned Standing Counsel for respondent No.2-Insurance Company.

11. Concerning permanent disability, the finding recorded by the Tribunal rejecting the evidence of P.W.2 and Ex.C.1-disability certificate, certainly, does not warrant any interference in view of the observations made by this Court in other appeals, which are unnecessary now to refer. However, concerning the compensation granted by the Tribunal, towards the injuries sustained by the petitioner, the same appears to be on lower side. For the first injury, i.e., fracture of fifth metatarsal of right foot, the Tribunal has granted Rs.5,000/- and the same is enhanced to Rs.10,000/-; and likewise, for the second injury, i.e., fracture of calcanium of right foot, the Tribunal has granted Rs.5,000/- and the same is also enhanced to Rs.10,000/-. However, the amount of Rs.15,000/- granted by the Tribunal towards probable expenditure including medical bills, etc., is maintained. For deformity of right foot, the Tribunal has granted Rs.15,000/-, since it persists, the same is enhanced to Rs.30,000/-. The amount of Rs.5,000/- granted by the Tribunal towards loss

of education for three months is also maintained. The Tribunal has not granted any amount towards pain and suffering and there is no indication that the amount granted towards probable expenditure is for pain and suffering. Therefore, a sum of Rs.10,000/- towards pain and suffering, Rs.5,000/- towards extra nourishment and Rs.3,000/- towards transport charges are granted.

12. Somehow, the Tribunal in the concluding sentence of the result portion in paragraph No.14, observed that respondent No.2-Insurance Company is at liberty to recover the compensation amount payable by it from respondent No.1-owner, merely observing the contention of learned counsel for respondent No.2-Insurance Company in paragraph No.12 of the order that neither petitioner nor respondent No.1 proved that the driver of the crime vehicle was having valid driving licence at the time of accident and as per the terms of Ex.A.8-insurance policy, respondent No.2 is liable to pay the compensation only when the driver of the crime vehicle was having valid driving licence and further observing the contentions raised by the learned counsel for respondent No.2 and then placing reliance on the decision of this Court in **United India Insurance Company Limited Vs. Gorla Shankar and others**^[1] in regard to breach of insurance policy. It is appropriate to extract paragraph No.12, which is thus:

"R-2 counsel contended that neither petitioner nor R-1 proved that the driver of the crime vehicle was having valid driving license at the time of accident. As per the terms of Ex.A-8 R-2 is liable to pay the compensation only when the driver of the crime vehicle was having valid driving license. The learned counsel for R-2 contended that as the petitioner and R-1 failed to prove that the driver of the jeep was having valid driving license at the time of accident. R-2 is not liable to pay any compensation to the petitioner. but on that ground R-2 cannot escape from its liability, in view of the decision reported in **2003(1) Decisions Today (AP) 144 in between United India Insurance Co. Ltd., V/s Gorla Shankar and others**, wherein it is held that in case of breach of insurance policy conditions on account the vehicle being driven without valid license, it was held by the Apex Court that the insurer may statutorily liable to pay the compensation to third parties and can recover from the insured vehicle owner of the amount paid to third parties. R-2 cannot escape from its liability to pay the compensation to the petitioner, but at best it can recover the compensation amount paid by it from R-1. So, R-2 at first has to pay the compensation to the petitioner and then has to recover the same from R-1. The liability of R-1 and R-2 is joint and several. This petition has to be partly allowed with proportionate costs."

13. In fact, the Tribunal went wrong in recording such a finding by making such observations in paragraph No.12 as extracted in the above and liability cannot be thrust on respondent No.1, where the burden of proof certainly lies on respondent No.2 if violation of the terms and conditions of insurance policy is complained. In the instant case, the owner of the crime vehicle remained ex

parte before the Tribunal, whereas, respondent No.2 has not attempted, at all, to let in any evidence. In such event, certainly, the said finding recorded by the Tribunal is liable to be set aside and, accordingly, set aside making both the respondents jointly and severally liable to pay compensation.

14. Thus, the petitioner is entitled to a total sum of Rs.88,000/- (Rupees eighty eight thousand) as against Rs.45,000/- granted by the Tribunal, towards compensation and the same is accordingly granted against both respondent Nos.1 and 2 jointly and severally. So far as the rate of interest is concerned, the Tribunal granted the same at 9% per annum and the same is maintained on the amount granted by the Tribunal and on the enhanced amount, interest at 7.5% per annum from the date of petition till date of realization is granted in view of the decision of the Hon'ble Apex Court in **Rajesh and others Vs. Rajbir Singh and others**^[2].

15. Accordingly, the instant appeal is allowed in part modifying the order passed by the Tribunal, by enhancing the compensation with interest, as indicated above, and confirming the same in all other respects. There shall be no order as to costs.

16. As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, stand

closed.

A. SHANKAR NARAYANA, J

4th February, 2016

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[\[1\]](#) 2003(1) Decisions Today (AP) 144

[\[2\]](#) 2013 ACJ 1403