

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1461 of 2005

JUDGMENT :

On the ground that a meager compensation was awarded, the appellant/petitioner has preferred the instant Civil Miscellaneous Appeal, aggrieved by the order and decree dated 31.03.2005 in O.P.No.786 of 2004 (Old O.P.No.258 of 2003) passed by the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Suryapet, Nalgonda District (for brevity "the Tribunal"), whereby and whereunder a sum of Rs.9,500/- was awarded towards compensation with interest at 9% per annum, as against the claim of Rs.50,000/- made under Sections 166 of the Motor Vehicles Act, 1988, for the injuries sustained by her in a road accident, seeking enhancement of compensation.

2. The appellant herein is petitioner, respondent No.1 is the owner of the offending Tractor and Trailer bearing No.AP 24B 5988 and 5989, and respondent No.2 is the Oriental Insurance Company Limited.

3. For the sake of convenience, in this appeal, the parties are referred to as they are arrayed in O.P.No.786 of 2004 before the Tribunal.

4. The facts, in brief, are that on 11.09.2002 at about 7.00 p.m., the petitioner along with other persons boarded the auto bearing No.AP 24U 1507 at Suryapet town to go to Rajnaik Thanda village and when they reached the outskirts of Rajnaik Thanda on Suryapet-Janagaon road, at about 8.00 p.m., the driver of the Tractor and Trailer bearing No.AP 24B 5988 AND 5989 came in opposite direction in a rash and negligent manner with high speed and dashed the auto, due to which the petitioner sustained

grievous injury i.e., fracture to right leg and she was shifted to Government Area Hospital, Suryapet and took further treatment at private hospitals and the police of Suryapet (Rural) Police Station, registered a case in Crime No.62/2002 for the offence punishable under Section 337 of IPC against the driver of the offending tractor and trailer. The petitioner claimed a sum of Rs.50,000/- towards compensation for the injuries sustained by her.

5. Before the Tribunal, the 1st respondent – owner of the offending Tractor and Trailer remained exparte, and the 2nd respondent-Oriental Insurance Company Limited alone contested the claim by raising various grounds in its counter. Basing on the pleadings, the Tribunal framed the following three issues for fixing liability and determining the amount of compensation:-

- (1) Whether the pleaded accident occurred resulting in injuries to the claimant, if so, whether it was due to the fault of the driver of the Tractor and Trailer bearing No.AP-24-B-5988, 5989?
- (2) Whether the Tractor and Trailer bearing No.AP-24-B-5988, 5989 belongs to R-1 and stood insured with R-2 on the date of the accident, and if so, whether the policy covers the risk of the claimant?
- (3) Whether the claimant is in principal entitled to compensation, and if so, to what amount and from which of the respondents?
- (4) To what relief?

6. During 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.

7. The Tribunal has taken up issue Nos.1 and 2 together for discussion and on appraisal of evidence on record, held both the

issues in favour of the petitioner. 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 Ex.A-3, attested copy of wound certificate dated 17.09.2002, the Tribunal has awarded a sum of Rs.5,000/- towards pain and suffering, Rs.4,500/- towards loss of income during period the petitioner was bed ridden for three months, and thus, the Tribunal has granted a total sum of Rs.9,500/- with interest @ 9% per annum from the date of petition till realisation, while directing respondent Nos.1 and 2 to jointly deposit the said amount within one month from the date of the order, by order and decree dated 31.03.2005.

8. The petitioner has challenged the aforesaid order in the present Civil Miscellaneous Appeal, on the ground that the compensation awarded is very meagre and the Tribunal has not properly appreciated the evidence on record in granting such amount and, therefore, sought to grant the balance amount of Rs.41,500/- towards compensation.

9. Heard Sri M. Madhava Reddy, learned counsel for the appellant/petitioner, as well as Sri Ch. Srinivas, learned Standing Counsel for the 2nd respondent-Oriental Insurance Company Limited. Despite service of notice, none appeared for the 1st respondent-owner of the offending Tractor and Trailer. Perused the impugned order and evidence on record, both, oral and documentary.

10. A perusal of Ex.A-3 – attested copy of wound certificate shows that the petitioner had sustained fracture to tibia. Learned counsel for the petitioner would submit that the petitioner has undergone steel casting and subsequently the same was also removed. It is further submitted that the petitioner has undergone treatment in Government Hospital at Suryapet. Therefore, keeping

in view, the nature of injuries sustained by the petitioner all over her person, she is certainly entitled to a sum of Rs.25,000/- towards injuries as well as pain and suffering. Keeping in view the fact that the petitioner would not have attained normalcy atleast for a period of six months, the amount of Rs.4,500/- granted by the Tribunal towards loss of temporary income is enhanced to Rs.9,000/-. Further, a sum of Rs.5,000/- is awarded towards extra-nourishment, Rs.3,000/- towards attendant charges and Rs.1,000/- is awarded towards transport charges. Thus, the petitioner is entitled to a total sum of Rs.43,000/- towards compensation. While maintaining interest granted @ 9% per annum on Rs.9,500/- awarded by the Tribunal, the petitioner is entitled to interest @ 7.5% per annum on the enhanced amount of Rs.33,500/- as per the decision of the Hon'ble Supreme Court in [RAJESH AND OTHERS V. RAJBIR SINGH AND OTHERS](#)^[1].

11. Accordingly, the Civil Miscellaneous Appeal is allowed in part, enhancing the amount of compensation from Rs.9,500/- to Rs.43,000/- (Rupees forty three thousand only) along with interest @ 9% per annum on Rs.9,500/- as was awarded by the Tribunal and @ 7.5% per annum on the enhanced amount of Rs.33,500/- (Rupees thirty three thousand five hundred only) from the date of petition till the date of realisation, and the same shall be apportioned between respondent Nos.1 and 2 in the same proportion as directed by the Tribunal. No order as to costs.

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

JUSTICE A. SHANKAR NARAYANA

08.02.2016.

Msr

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