

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.2897 OF 2005

JUDGMENT:

Feeling dissatisfied with the award of Rs.1,47,400/- as compensation, as against the claim of Rs.4,00,000/- laid under

Section 166 of the Motor Vehicles Act, 1988, by order and decree, dated 31.03.2005, in O.P.No.789 of 1996 on the file of Chairman, Motor Accidents Claims Tribunal – cum – II Additional Chief Judge, City Civil Court, Hyderabad, the instant appeal is preferred by the petitioner in the said O.P. seeking enhancement of compensation.

2. The appellant is the petitioner, whereas respondent Nos.1 and 2, who are the owner and insurer of the offending vehicle, are respondent Nos.1 and 2 in the O.P. before the Tribunal.

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 13.03.1996 at about 10:00 PM, the petitioner was travelling in an Ambassador Car bearing registration No.ADL 666 from Hyderabad to Bombay, during which time, a Tempo bearing registration

No.KV-32-955 came from opposite direction and dashed the Car and thus, there was collision, as a result of which, the petitioner sustained multiple injuries all over his body, more particularly, on his head, right shoulder and he underwent surgical intervention of his right thigh. He states that he was shifted to CDR Hospital and spent huge amount towards medical expenses and his skull bone was yet to be reconstructed and therefore, sought to grant Rs.4,00,000/- as compensation.

5. Before the Tribunal, respondent No.1 remained *ex parte*. Respondent No.2 opposed the claim by filing counter.

6. Based on the said pleadings, the Tribunal has framed the following three issues:

“1. Whether the accident in question took place on 13.03.1996 due to rash and negligent driving of the Ambassador car bearing No.ADL 666 by its driver?

2. Whether the petitioner is entitled to any compensation for the injuries sustained by him in the accident? If so, to what amount and from whom?

3. To what relief?”

7. During enquiry, the petitioner besides examining himself as PW.1 examined one Dr. E.V. Ravi Shanker as PW.2 and marked Exs.A1 to A11 to substantiate the claim laid. On behalf of respondent No.2, no oral evidence was let in, but a copy of the Insurance Policy was marked as

Ex.B1.

8. The Tribunal, having tendered a finding in favour of the petitioner on issue No.1, on issue No.2, on appraisal of evidence on record, granted Rs.50,000/- for the depressed fracture in frontal region, Rs.10,000/- towards pain and suffering and extra nourishment as he was in hospital for three weeks as inpatient, Rs.2,000/- for the injury on right shoulder joint, Rs.3,000/- towards medical bills covered under Ex.A11, Rs.20,000/- to meet the expenditure to undergo cranioplasty, Rs.20,000/- towards loss of income and loss of academic year, Rs.400/- for the bills covered under Ex.A3 and Rs.1,000/- towards transportation. Further, the Tribunal, having observed that there was no material to substantiate the stand of the petitioner that he was bed ridden for two years, declined to grant any amount for the said period and also declined to grant the entire amount of Rs.84,626/- covered under Ex.A2 on the ground that the contents therein were not proved by examining the issuing authority, but, however, granted Rs.40,000/- towards medical expenditure covered under Ex.A2 and Rs.1,000/- towards medical attendant, thus, totalling to a sum of Rs.1,47,400/- with interest at 9% per annum from the date of petition till realisation.

9. It is the aforesaid order which is under challenge in the instant appeal on the ground that the Tribunal has

not properly appreciated the evidence on record, more particularly, the medical expenditure incurred in CDR Hospital. It is also stated that the petitioner being a practising advocate needs attention, mentally and physically, while dealing with the cases and due to the injury to frontal region, he is being subjected to mental stress and therefore, there is danger to his life and the said fact was not appreciated by the Tribunal. It is also stated that the Tribunal originally granted Rs.1,95,000/- by passing an order on 25.09.2000 by appreciating all the facts, but since it was an *ex parte* order, the same was set aside and the matter was adjudicated on merits. It is also stated that the Tribunal has granted far less than that amount to which the petitioner is legally entitled without there being any basis and therefore, sought to grant the balance amount.

10. Heard Sri Pasham Krishna Reddy, learned counsel for the appellant. The appeal was dismissed for default against respondent No.1 by order, dated 05.01.2012. No representation for respondent No.2, when the matter is called.

11. Now the short question that arises for consideration is whether the compensation awarded by the Tribunal is just and adequate when, kept in view, the injuries sustained by the petitioner, the sufferance he had

undergone and the effect of the said injuries through out the rest of his life, if any?

12. The Tribunal, having discussed the evidence of PW.2, who treated the petitioner, somehow appears to have not properly appreciated the intricacies and the effect of the injuries sustained by the petitioner. When the evidence of PW.2 is perused, it shows that the petitioner sustained injury on the frontal region and the C.T. Scan shows a large blood clot in the right side of the brain along with fracture of the skull bone. It also shows that the petitioner has undergone surgery for removal of the blood clot and also for removal of loose bone pieces and he was treated as inpatient for three weeks therefor and was advised medication for five years and to continue Eptoin-100 mg twice a day to prevent fits. At the time of discharge, he was advised reconstruction of skull bone after a period of two months and he requires Rs.45,000/- to Rs.50,000/- for reconstruction, but the petitioner did not comply with the same. However, his evidence shows that the disability so far as intelligence is concerned can be assessed only after neuropsychological evaluation surgery and follow up treatment given at CDR Hospital, Hyderabad. When he was cross-examined by the Insurance Company, though certain questions were put to him, he answers that it was not necessary that every damage in the brain should have external manifestations

and the petitioner had regular visits till 1997 and no specific evaluation was done, but to a question he answers that he does not know whether the petitioner expresses any disability in his legal practice.

13. Be that as it may, the fact that the petitioner had to undergo reconstruction of the skull bone cannot be ruled out, for which a sum of Rs.45,000/- to Rs.50,000/- was required during those days. It is not known why the petitioner had not undergone the said surgery for reconstruction of bone. Be that as it may, the exposure of that portion, without bony area, would cause lot of inconvenience and there would be some sort of danger to that area, in case, he comes into contact with any sharp/blunt object. However, leaving it apart, the amount of Rs.20,000/- granted for the same by the Tribunal appears to be very meagre and the same is enhanced to Rs.50,000/- to enable the petitioner to undergo the said surgery, in case, he has not undergone the same yet. The Tribunal has granted Rs.50,000/- towards depressed fracture of frontal region and the same is maintained. However, for the fracture of thigh bone and shoulder, no amounts were granted. Therefore, a sum of Rs.40,000/- is granted at Rs.20,000/- each. The Tribunal had granted Rs.10,000/- towards pain and suffering and extra nourishment. A sum of Rs.15,000/- towards pain and suffering and a sum of Rs.10,000/- towards extra

nourishment are granted. The Tribunal has granted Rs.2,000/- to the injury and the same is maintained. Towards medical bills, the Tribunal has granted Rs.3,000/- as against Rs.84,626/- on the premise that none connected with the same is examined, but when it is clear from the evidence on record that the petitioner had undergone treatment for three weeks as inpatient and the evidence of PW.2 establishes the same, the amount of Rs.84,626/- cannot be deprived and therefore, the same is granted as against Rs.3,000/- granted by the Tribunal. Towards loss of income and academic year, Tribunal has granted Rs.20,000/-. It is clear from the evidence of PW.1 that for about two years, he had suffered with inconvenience with his movement on account of the injury to the brain as bone pieces were removed. Therefore, the same is enhanced to Rs.60,000/-. Towards medical attendant, Rs.2,000/- granted by the Tribunal is far below by any standard. Therefore, the same is enhanced to Rs.20,000/-. The amount of Rs.400/- granted concerning the medical bills covered by Ex.A3 is maintained. The medical expenditure of Rs.40,000/- spent for treatment in CDR Hospital is already covered while granting Rs.84,626/-. The petitioner is, thus, entitled to a total sum of Rs.3,32,026/- as against Rs.1,47,000/- granted by the Tribunal.

14. Concerning the rate of interest, the interest

awarded by the Tribunal at 9% per annum is maintained on the original amount of Rs.1,47,000/- awarded by the Tribunal and on the enhanced amount, the petitioner is entitled to interest at 7.5% per annum from the date of petition till realisation, as per the decision of the Honourable Apex Court in **Rajesh and others v. Rajbir Singh and others**^[1].

15. Accordingly, the instant appeal is allowed in part. There shall be no order as to costs.

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

A. SHANKAR

NARAYANA, J
April 28, 2016.
MD

^[1] (2013) 9 SCC 54