

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.150 OF 2005

JUDGMENT:

Feeling dissatisfied with the award of Rs.25,000/- as compensation, as against the claim of Rs.1,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), by order and decree, dated 24.09.2004, in O.P.No.453 of 2000 on the file of Chairman, Motor Accidents Claims Tribunal – cum – I Additional District Judge, Ranga Reddy District, the petitioner in the said O.P. preferred the instant appeal 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 12.11.1999 at about 09:30 AM, while the petitioner was proceeding on his cycle towards L.B. Nagar from Lehninnagar side and

when he reached Sunder Weigh Bridge on Ring Road, Bairamalguda, a lorry bearing registration No.AIK-7486 driven in a rash and negligent manner at high speed coming in opposite direction dashed him, due to which, he fell down and sustained injuries to his person. According to him, he was shifted to the hospital, where he incurred Rs.30,000/- towards medical expenses and therefore, sought a sum of Rs.1,00,000/- as compensation.

5. Before the Tribunal, respondent No.1 remained *ex parte*. Respondent No.2 filed counter opposing the claim taking the plea of contributory negligence on the part of the petitioner himself and therefore, sought to dismiss the claim petition against it.

6 . Based on the said pleadings, the Tribunal has framed four issues in order to determine the liability as well as the compensation to which the petitioner is entitled.

7. During enquiry, the petitioner examined himself as PW.1 besides examining PWs.2 to 4 and marked Exs.A1 to A5 to substantiate the claim laid. On behalf of respondent No.2, the Branch Manager was examined as RW.1 and marked Exs.B1 and B2, which are the copies of final report and policy, respectively. Even the case sheet of the Government Hospital, where the petitioner underwent treatment, was summoned and marked as

Ex.X1.

8. The Tribunal, on issue No.1, though held that the petitioner failed to establish that the accident occurred due to the negligence of the driver of the offending lorry, on issue Nos.2 and 3, having observed that respondent Nos.1 and 2 cannot be exonerated from liability, proceeded on the premise that 'no fault liability' would attract and having considered the evidence in Ex.X1 and the injuries sustained by the petitioner, granted Rs.25,000/- as compensation, keeping in view, the provisions of Section 140 of the Act.

9. It is the aforesaid order which is under challenge in the instant appeal seeking enhancement of compensation by way of modification of the order and decree under challenge contending in the grounds that the Tribunal went wrong in referring to Section 140 of the Act and awarding Rs.25,000/- as compensation and that the Tribunal has not properly appreciated the evidence of PWs.1 and 2 and the manner in which the accident had taken place.

10. Heard Sri M.K. Ratnam, learned counsel for the appellant and Sri R. Venkat Rao, learned counsel for respondent No.2. Despite service of notice on respondent No.1, none appears.

11. It is no doubt true that Ex.B1 – final report is filed to show that there was no rash and negligent driving on the part of the driver of the offending lorry, but, certainly, it ought not to have influenced the Tribunal in arriving at the conclusion in assessing the rash and negligent driving basing on the evidence let in by the petitioner and as per the material on record. In fact, no negligence can be attributed to the petitioner as he was 65 years old on the date of accident and it is highly improbable that a man of 65 years, while riding cycle, would become panicky and ride the cycle at high speed and dash the lorry. Therefore, that part of the recitals made in Ex.B1 have to be ignored, more particularly, when the author thereof was not summoned and examined by the insurer. Besides the same, the Investigating Officer in Ex.B1 mentions that the incident was accidental. In such an event, certainly, the finding recorded by the Tribunal has to be upset and accordingly, it is set aside.

12. Concerning the compensation granted by the Tribunal, it appears to be on lower side as could be gathered from the nature of injuries sustained by the petitioner. The contents of Ex.X1 would show that the petitioner sustained fracture of extra capsular neck of left femur and he was treated in the hospital conservatively from 12.11.1999 and discharged on 27.11.1999 and it

was a grievous injury sustained by him. It is not only the evidence of PW.1, but Ex.X1 would also show the same. In view of the same, a sum of Rs.25,000/- is granted towards injuries and, pain and suffering put together. Besides the same, towards extra nourishment, a sum of Rs.10,000/- and towards transport charges, a sum of Rs.2,000/- are granted. Though the petitioner claims that he has spent Rs.35,000/- towards his treatment and filed bunch of medical bills under Ex.A4, a sum of Rs.5,000/- is granted as he suffered grievous injury and thus, put together, the petitioner is granted Rs.42,000/- as against the amount of Rs.25,000/- granted by the Tribunal.

13. Concerning the rate of interest, the interest awarded by the Tribunal at 9% per annum is maintained on the amount of Rs.25,000/- 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].

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

15. As a sequel thereto, Miscellaneous Applications,

if any, pending in this appeal shall stand disposed of.

NARAYANA, J
April 27, 2016.
MD

A. SHANKAR

[\[1\]](#) (2013) 9 SCC 54