

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2562 OF 2009

JUDGMENT:

The present appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act') by the petitioner in O.P. No.2576 of 2005, on the file of the Motor Accident Claims Tribunal - cum - XII Additional Chief Judge (Fast Track Court), City Civil Court, Hyderabad (for short 'the Tribunal'), seeking enhancement of compensation on the ground that the amount of Rs.38,000/- granted by the Tribunal in the aforesaid O.P. passed by order and decree, dated 23-04-2007, as against the claim of Rs.1,00,000/- laid under Section 166 of the Act was on lower side when compared with the injuries he sustained and the sufferance he had undergone.

2. Heard Sri B. Parameswara Rao, learned counsel for the appellant - petitioner. It is endorsed by the appellant in the cause title of the grounds of appeal that respondent No.1, owner of the car, is not a necessary party as he remained *ex parte* before the Tribunal. Respondent No.2 - M/s. National Insurance Company Limited, though, served with notice, it has not entered appearance.

3. Since no appeal appears to have been filed by the Insurer complaining any violations, the factual aspect needs no advertence.

4. The learned counsel for the appellant would submit that the Tribunal unjustly excluded the disability certificate - Ex.A-5, despite the petitioner examining PW.2, the doctor, who issued it. It is also his submission that the petitioner though, sustained two grievous injuries, the amounts awarded towards pain and suffering and for the injuries as such, are on lower side, as the petitioner was treated as in-patient for four (4) days and, therefore, sought to grant the balance amount.

5. The Tribunal has awarded Rs.5,000/- towards pain and suffering; Rs.2,000/- for one simple injury and Rs.25,000/- for two grievous injuries making a total of Rs.27,000/- for injuries; Rs.3,000/- towards medical and incidental expenses; Rs.2,000/- towards loss of income; and Rs.1,000/- towards transport, food and extra nourishment etc., making a total of Rs.38,000/- and granted the same as compensation with interest at 7.5% per annum thereon.

6. The reason assigned by the Tribunal for recording a finding that it was not accepting 25% disability under Ex.A-5 spoken to by PW.2 and issued by him cannot be faulted for the reason Ex.A-5 appears to be bereft of relevant details. Therefore, basing on the nature of injuries, the amounts awarded by the Tribunal require examination as to whether to award higher amount or to confirm the same.

7. It is no doubt true, the Tribunal placed reliance in **U.K. Durgamma v. U. Satyanarayana Raju**¹ of this Court, but, the accident in the present case has taken place in the year 2005 and, therefore, when viewed in the context of price index number and the other expenses to be borne by the victim of the accident in the year 2005 compared to the victim of the accident in the said decision, certainly, the petitioner is entitled to enhancement of compensation. The amount of Rs.2,000/- awarded for simple injury is enhanced to Rs.3,000/-. The amount of Rs.25,000/- granted towards two grievous injuries is enhanced to Rs.50,000/- keeping in view that the first injury is though, dislocation of a limb, but associated with the fracture also as there is fracture of left ankle which would have disabled the petitioner to a considerable extent making him to suffer for at least six months and also immobilized him for at least two months. The amount of Rs.3,000/- granted towards medical expenses and incidental charges is enhanced to Rs.8,000/- as medical bills would show the amount as Rs.7,6675/-. Towards loss of income, the amount of Rs.2,000/- awarded by the Tribunal is enhanced to Rs.6,000/- taking it at Rs.1500/- per month towards loss of temporary earnings for a period of four (4) months. The amount of Rs.1,000/- awarded towards extra nourishment, food and transport charges is enhanced to Rs.3,000/-. Thus, in all, the petitioner is entitled to Rs.70,000/- as

¹. 1997 (1) ALD 658

compensation as against the amount of Rs.38,000/- awarded by the Tribunal.

8. Even, the rate of interest awarded by the Tribunal at 7.5% per annum is in tune with the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**² and, therefore, the same is maintained.

9. In the result, the appeal is allowed in part, and the order and decree, dated 23-04-2007, in O.P. No.2576 of 2005, passed by the Tribunal are modified enhancing the compensation to Rs.70,000/- (Rupees seventy thousand) from Rs.38,000/- with interest at 7.5% per annum thereon from the date of petition till realization. No order as to costs.

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

A. SHANKAR NARAYANA, J

November 24, 2016.

Mgr

². 2013 ACJ 1403