

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.1621 OF 2005

JUDGMENT:

Feeling dissatisfied with the award of Rs.7,000/- as compensation, as against the claim of Rs.1,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988, by order and decree, dated 05.11.2002, in O.P.No.62 of 2000 on the file of Chairman, Motor Accidents Claims Tribunal – cum – District Judge, Adilabad, 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 18.03.1998 at about 11:30 PM, while the petitioner was proceeding in an Auto Rickshaw bearing registration No.AP-13-V-3696 from Somagudem cross roads having attended his duty, near Lambada Thanda, a lorry bearing registration No.AP-1-T-

9136 driven at high speed in a rash and negligent manner dashed the Auto, due to which, the Auto turned upside down and the petitioner and others travelling in the Auto sustained injuries. The petitioner was immediately shifted to Area Hospital, Bellampalli and from there, he was referred to Area Hospital, Ramakrishnapur, where he was treated as inpatient and had also undergone treatment under private Orthopaedic Surgeon. According to the petitioner, he suffered fracture of shaft of right femur. A crime was registered against the driver of the lorry for the offences punishable under Sections 337 and 338 I.P.C. by the concerned Station House Officer and charge sheet was laid on the file of Judicial Magistrate of First Class, Luxettipet in C.C.No.141 of 1998. The petitioner, claiming that he was 40 years old working as Trammer in SMG-1 Incline of S.C.C. Limited of Mandamarri Division drawing salary of Rs.5,436-08 ps. per month, sought a sum of Rs.1,00,000/- 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 three 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 and marked Exs.A1 to A7 to substantiate the claim laid. On behalf of respondent No.2, no evidence, either oral or documentary, was let in.

8. The Tribunal, having elaborately discussed the evidence on record, held issue No.1 in favour of the petitioner. On issue No.2, referring to the evidence of PW.1 and the description of the injuries mentioned in Ex.A2, held that the injuries mentioned in Ex.A2 were simple in nature and granted a sum of Rs.5,000/- towards pain and suffering and Rs.2,000/- towards medical expenses, transport charges and extra nourishment, thus, totalling to a sum of Rs.7,000/-.

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.

10. Heard Sri V. Subramanyam, learned counsel for the appellant and Smt. A. Jayanthi, learned counsel for respondent No.2. Despite service of notice on respondent No.1, none appears.

11. Perused the order under challenge and the evidence on record, both oral and documentary, let in by the petitioner.

12. *Ex facie*, the finding recorded by the Tribunal that in Ex.A2, the nature of injuries sustained by the petitioner are recorded as simple in nature appears to be wholly incorrect. A perusal of Ex.A2 would show that nowhere it is mentioned that the injuries were simple in nature. In fact, the injuries are described thus:

“1. Tenderness and swelling over the
middle

1/3rd of the right thigh.

2. Abrasion over the left orbit.”

What all stated by the Medical Superintendent, Area Hospital, Bellampalli, was that the petitioner, who met the road accident, was admitted in that hospital on 18.03.1998 and referred to Area Hospital, Ramakrishnapur on 19.03.1998 for further treatment. Except the same, nothing else is found indicating the nature of the injuries sustained by the petitioner. In such an event, the finding recorded by the Tribunal is palpably wrong and awarding compensation basing on such a finding is, certainly, erroneous. As could be gathered from the certified copy of the Judgment in C.C.No.141 of 1998 on the file of Judicial Magistrate of First Class, Luxettipet, it is clear that the offences punishable under Sections 337 and 338 I.P.C. were clutched against the driver of the lorry indicating that grievous injuries were sustained by the passengers travelling in the Auto. The very fact that the petitioner was referred from Area Hospital, Bellampalli to

Area Hospital, Ramakrishnapur, for better treatment is an indication that unless the petitioner sustained grievous injuries, there was no need for referring him to the Area Hospital, Ramakrishapur. When viewed in that angle, certainly, the assertion of the petitioner that he sustained fracture of his right thigh and injuries in his chest cannot be disbelieved and due weight has to be given to it. No doubt, the petitioner ought to have examined the Medical Officer, who treated him, but failure to examine the Medical Officer may not be a ground to disentitle the petitioner for just compensation. When viewed in that angle, keeping in view, that the petitioner might have suffered great inconvenience, a sum of Rs.25,000/- is granted towards pain and suffering and Rs.25,000/- is granted towards transport charges, extra nourishment and temporary loss of earnings. Thus, the petitioner is granted a sum of Rs.50,000/- as compensation.

13. Concerning the rate of interest, the interest awarded by the Tribunal at 9% per annum is maintained on the original amount of Rs.7,000/- 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.

A. SHANKAR

NARAYANA, J
April 27, 2016.
MD

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