

**HON'BLE SRI JUSTICE A. SHANKAR**

**NARAYANA**

**M.A.C.M.A. No.2305 OF 2005**

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**JUDGMENT:**

Dissatisfied with the amount of Rs.40,000/- as compensation granted by the learned Chairman, Motor Accident Claims Tribunal - cum - II Additional District Judge (Fast Track Court), Nizamabad (for short 'the Tribunal'), by order and decree, dated 07-03-2005, in O.P. No.508 of 2000 as against the claim of Rs.2,00,000/- laid under Section 166 (1) (a) of the Motor Vehicles, Act, 1988 (for short 'the Act') read with Rule 455 of the Andhra Pradesh Motor Vehicle Rules, 1989, the instant appeal is preferred by the petitioner seeking enhancement.

2. The appellant herein is the petitioner and respondent Nos.1 and 2, who are owner and insurer of Scooter bearing registration No.AP 25C 3223, respectively, are respondent Nos.1 and 2, respectively in 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 28-11-1999 at

about 8.00 p.m., while the petitioner, who is an agriculturist, milk vendor and also doing business in paddy, rice etc., was standing on the left side of road near Laxmi Rice Mill talking to one Durgaiah, a scooter bearing registration No.AP 25C 3223 proceeding towards Medak driven in

a rash and negligent manner at high speed came and hit him, due to which, he sustained fracture of his leg as the scooter ran over his right leg and injuries to his head and other parts of his person. He was immediately shifted to Government Hospital, Yellareddy, where he was treated as inpatient. According to him, he had undergone treatment in a private hospital, spent Rs.80,000/- towards medical expenses and sustained permanent disability and became dependant and, therefore, sought Rs.2.00 lakh as compensation from respondent Nos.1 and 2, who are owner and insurer of the scooter.

5. Respondent No.1, owner of the scooter, remained *ex parte* before the Tribunal.

6. Respondent No.2 - M/s. United India Insurance Company Limited, filed counter raising various pleas, disputing the allegations mentioned in the claim petition.

7. On the basis of the pleadings, the Tribunal framed three issues about fixing the responsibility for the

accident.

8. During inquiry before the Tribunal, the petitioner besides examining himself as PW.1, has examined Dr.J. Ajay Kumar as PW.2 and marked Exs.A-1 to A-10 to substantiate his claim. On behalf of respondent No.2, no witnesses were examined and no documents were filed.

9. Heard Sri K. M. Mahender Reddy, learned counsel for the petitioner and Sri Srinivasa Rao Vutla, learned standing counsel for respondent No.2. None appears for respondent No.1, despite serve of notice.

10. Perused the order and the evidence on record, both, oral and documentary let in by the parties.

11. The Tribunal has recorded a finding that permanent disability said to have sustained by the petitioner, as spoken to by PW.2, to the extent of 40% for fracture of right neck of femur, cannot be believed holding that he was not a member of the Medical Board. However, basing on the description of injuries occurring in Ex.A-3 - injury certificate, awarded a sum of Rs.20,000/- towards injury as such; Rs.5,000/- towards pain and suffering; Rs.5,000/- towards costs of medicines; Rs.5,000/- towards loss of earnings and Rs.5,000/- towards extra nourishment and hospital charges and, thus, making

a total of Rs.40,000/-, which is under challenge in the instant appeal on the ground that the amount granted by the Tribunal is on lower side and there was no proper appreciation of evidence of PW.2 and the partial permanent disability spoken to by him.

12. The finding recorded by the Tribunal that the evidence of PW.2 so far as permanent disability spoken to by him is concerned cannot be accepted, is well-reasoned for the reason that no certificate at all was issued by PW.2 except stating in his evidence, and in fact, PW.1 was not prevented to approach the Medical Board concerned to obtain a certificate, in case, he did really sustain permanent disability. Even, when examined the nature of injury, as described in Ex.A-3, it shows that he sustained a fracture of right neck of femur, and Ex.A-10 - X-ray film in the light of evidence of PW.2 would show that steel rod and nail being applied to the right hip joint and for removal of the same, petitioner has to undergo yet another operation. In that view of the matter, the petitioner is granted additionally a sum of Rs.10,000/- towards operation charges irrespective of the fact whether he has not come up with any additional evidence to show that he had undergone such operation on the advice of PW.2 or not.

13. So far as the amount of Rs.20,000/- granted by

the Tribunal is concerned, the same is enhanced to Rs.30,000/- keeping in view, that PW.1 sustained injury to one of the lower limbs disabling him to recover for a considerable time. Concerning pain and suffering, the amount of Rs.5,000/- is enhanced to Rs.10,000/-. No transport charges were granted by the Tribunal. Towards the same, a sum of Rs.2,000/- is granted. Towards temporary loss of earnings, the amount of Rs.5,000/- granted by the Tribunal is enhanced to Rs.8,000/-. The amounts of Rs.5,000/- and Rs.5,000/- granted by the Tribunal towards costs of medicines and extra nourishment, respectively, are maintained. Thus, the petitioner is totally entitled to Rs.70,000/- as compensation as against the amount of Rs.40,000/- granted by the Tribunal.

14. Concerning rate of interest, the Tribunal has granted the same at 9% per annum and the same is not disturbed on the amount awarded by the Tribunal. However, on the enhanced amount of Rs.30,000/-, interest is granted at the rate of 7.5% per annum from the date of petition till realization in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**<sup>[1]</sup>.

15. In the result, the appeal is allowed in part, and the order and decree, dated 07-03-2005, in O.P. No.508

of 2000, passed by the Tribunal, are modified, enhancing the compensation to Rs.70,000/- (Rupees seventy thousand ) from Rs.40,000/- with interest at the rate of 9% per annum on the amount of Rs.40,000/- granted by the Tribunal and at the rate of 7.5% per annum on the enhanced amount of Rs.30,000/-(Rupees thirty thousand) from the date of petition till realization. There shall be no order as to costs.

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

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**A. SHANKAR NARAYANA, J**

**March 11, 2016.**

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