

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A. C.M.A. No.1493 OF 2009

JUDGMENT:

The petitioner, on being dissatisfied with the award of Rs.10,000/- as compensation for the fracture of right shoulder and anterior (center) dislocation as against his claim of Rs.2,00,000/- laid under Section 166 (1) (a) of the Motor Vehicles Act, 1988 (for short 'the Act'), preferred the instant Civil Miscellaneous Appeal challenging the order and decree, dated 09.03.2005, in O.P. No.112 of 2001, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - V Additional District Judge, Nizamabad.

2. The appellant herein is petitioner in the O.P. before the Tribunal, while respondent Nos.1 and 2, who are owner and insurer, respectively, of the Jeep bearing No.AP-1-D-2380, are respondent Nos.1 and 2, respectively.

3. For the sake of convenience, the parties are hereinafter referred to as arrayed in the O.P. before the Tribunal.

4. Since the fact-situation is not in dispute and even the finding recorded by the Tribunal discarding the disability certificate issued by PW.2, Dr. T. Narsing Rao, by elaborately dealing with his (PW.2) evidence and also

his conduct in issuing such certificate, is not in dispute as the learned counsel for the petitioner fairly agrees with the said finding.

5. Heard Sri P. Radhive Reddy, learned counsel for the petitioner (appellant), and Ms. I. Maamu Vani, learned counsel for the insurer.

6. Despite service of notice on respondent No.1, owner of the Jeep that involved in the accident, none appears on his behalf.

7. Ex.A-3 certified copy of medical certificate issued by the Civil Assistant Surgeon, Community Hospital, Nirmal, would show that the petitioner sustained fracture of greater tubercle of right humerus with anterior dislocation part. Based on the x-ray report, dated 30.08.2000, it is recorded as grievance in nature. The Tribunal has granted only Rs.5,000/- towards injury. Certainly, when kept in view, the inconvenience the petitioner has suffered and on account of the injury, unable to lift his right upper limb, the amount of Rs.5,000/- granted by the Tribunal is on lower side and, therefore, the same is enhanced to Rs.30,000/-.

8. The Tribunal has granted Rs.5,000/- towards extra-nourishment during the healing period of fracture. Keeping in view, transport charges, attendant charges and extra-nourishment, the amount of Rs.5,000/- granted

by the Tribunal towards extra-nourishment is enhanced to Rs.10,000/-. The petitioner, at the age of 22 years, was running a 'pan-shop', as such, towards loss of temporary earnings, a sum of Rs.4,500/- is granted at the rate of Rs.1,500/- for a period of three (3) months.

9. Thus, the petitioner is entitled to an amount of Rs.44,500/- (Rupees forty four thousand five hundred only) towards compensation as against Rs.10,000/- granted by the Tribunal and the same is accordingly granted. The rate of interest at 9% per annum granted by the Tribunal is maintained on the amount of Rs.10,000/- granted by it and on the enhanced amount, interest is granted at 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**^[1].

10. Accordingly, the Civil Miscellaneous Appeal is allowed in part modifying the order under challenge and enhancing the compensation, as indicated above. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

August 3, 2016.

PV

[\[1\]](#) 2013 ACJ 1403 = 2013(4)ALT35