

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1498 OF 2005

JUDGMENT:

Having got dissatisfied with the award of Rs.34,900/- as compensation by the order dated 28.04.2005 in O.P. No.621 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge (Fast Track Court-1), Khammam (for short, 'the Tribunal') as against the claim of Rs.2,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') and the Rules framed thereunder, for the injuries sustained by the appellant in a road accident, the instant appeal is preferred under Section 173 of the Act seeking enhancement of compensation.

2. The appellant herein is the petitioner, while respondent Nos.1 to 3 herein, who are the driver, owner and insurer of auto rickshaw bearing registration No.AP 20U 1720, respectively, are respondent Nos.1 to 3, respectively, in the original petition.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts in brief are that on 04.02.2001 at

about 11-00 a.m., while the petitioner along with other passengers boarded an auto rickshaw bearing registration No.AP 20U 1720 at Kotha Kothuru to go to Kodada, when it reached Painampally village, since respondent No.1, who is driver of the auto rickshaw, drove it in a rash and negligent manner at high speed, it turned upside down causing injuries to the petitioner and other passengers and the petitioner was admitted in Government Hospital, Nadigudem. Concerned police also registered a case in Crime No.9 of 2001 against the driver of auto rickshaw. Petitioner states that later, he was shifted to Mother Theresa Private Nursing Home at Kodada, where he had undergone surgical intervention, a steel rod was inserted in the left leg as he sustained fracture of both bones of left leg and spent Rs.70,000/- towards medical expenses and he was supposed to undergo further operation for removal of rods, which requires Rs.20,000/-. According to him, he was working as Salesman in Usha Watch Showroom, earning Rs.4,300/- and on account of the accident, he suffered partial permanent disability and suffering with loss of earning capacity and, therefore, sought the amount of Rs.2,00,000/- as compensation from respondent Nos.1 to 3.

5. Respondent Nos.1 and 2, who are driver and owner of the auto rickshaw remained *ex parte* before the

Tribunal. Respondent No.3-insurer of the auto rickshaw opposed the claim requiring the petitioner to prove the material allegations levelled in the claim petition, however, reserving its right to plead the defence available to it under Section 170 of the Act and sought to dismiss the claim petition against it.

6. Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry, the petitioner examined himself as P.W.1 besides examining the doctor as P.W.2 and marked Exs.A.1 to A.8 to substantiate his claim; whereas, on behalf of respondent No.3, Assistant Administrative Officer of its local branch was examined as R.W.1 and marked Ex.B.1, which is copy of insurance policy.

7. On appraisal of evidence on record, the Tribunal on issue No.1, recorded a finding that due to rash and negligent driving of the driver of auto, accident had occurred. On issue No.2, having referred to the description of injuries as shown in Ex.A.3 and the evidence of P.W.2-doctor, somehow, the Tribunal granted Rs.10,000/- towards medical expenses as against Rs.42,673/- as shown in Ex.A.7 for the treatment the petitioner had undergone, opining that the medical bills shown in Ex.A.7 were concocted and the petitioner might have spent only Rs.10,000/- towards medicines. Concerning loss of earnings, the Tribunal has granted a

sum of Rs.12,900/- for a period of three months as the petitioner might not have been able to do his job for atleast three months. So far as the disability is concerned, in the absence of any disability certificate being issued by P.W.2 or any competent authority, rejected that stand. The Tribunal, thus, granted a sum of Rs.10,000/- towards grievous injury that being fracture of both bones of right leg and Rs.2,000/- for the two simple injuries at the rate of Rs.1,000/- per injury, making a total of Rs.34,900/- with interest at 9% per annum. In regard to liability, the Tribunal, having found that there were 13 passengers travelling in the auto rickshaw, whereas the seating capacity of the auto rickshaw was six passengers and placing reliance on a decision of the Hon'ble Supreme Court in **United Insurance Company Limited v. Lehu and others**^[1], ordered respondent No.3-Insurance Company to initially pay the amount and recover the same from the owner-respondent No.2 while casting joint and several liability on respondent Nos.1 to 3 as could be gathered from the observation made in paragraph No.18 of its order.

8. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the Tribunal has granted meager compensation and has not assigned any reasons as to excluding the medical bills

covered under Ex.A7. It is also stated that the Tribunal has not properly appreciated the evidence let in by the appellant. It is according to the appellant that the evidence produced by him would show that there is shortening of right leg about 1½ inches and he lost his jaw and, therefore, sought to grant the balance amount.

9. Heard Sri Kadaru Prabhakar, learned counsel representing Sri K. Sita Ram, learned counsel for the appellant-petitioner, and Sri B. Devanand, learned Standing Counsel for respondent No.3-Insurance Company. Despite service of notice on respondent No.1-driver, none appears for him. Appeal was dismissed against respondent No.2-owner for default by the order dated 03.01.2012. However, dismissal of the appeal for default against respondent No.2-owner of the vehicle is of no consequence to decide the quantum of compensation, in view of the decision of a Division Bench of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others**^[2].

10. The only short question that requires adjudication is whether the compensation awarded by the Tribunal is just and adequate or whether the petitioner is entitled to enhancement of compensation under the circumstances mentioned in the grounds of appeal ?

11. Learned counsel for the petitioner would submit that the petitioner is not insisting the challenge as regards direction given by the Tribunal directing respondent No.3-Insurance Company initially to deposit and recover the same from the owner. Therefore, there is no necessity to deal with the said aspect.

12. Perused the order and the evidence on record, both, oral and documentary, let in by the petitioner. The evidence of P.W.2, of course, proves the injuries sustained by the petitioner, besides description of injuries shown in Ex.A3 and it is his assertion that Exs.A5 to A7 were issued by him. According to him, because of tendon injury to the right thumb, there is slight restriction of the movements of the thumb and there is some deformity over the right leg at the place of fracture and the petitioner cannot run and lift heavy weights due to the implant and cannot attend to hard work. However, when he was cross-examined, though, he initially stated that P.W.1 cannot work normally, but again stated that P.W.1 can work normally and can attend to clerical jobs. Thus, in the absence of disability certificate being issued by P.W.2 and atleast mentioning the degree of restriction so far as the moment of the limb of which both bones were broken, it is difficult to accept the stand of the petitioner that he sustained partial permanent disability. Therefore, the finding recorded by the Tribunal that the petitioner failed to

prove sustaining partial permanent disability cannot be upset. However, when viewed in the context of nature of injury and the evidence of P.W.2 and the medical bills, as well as the certificate issued by P.W.2 as in Ex.A.6, the amount of Rs.42,673/- cannot be denied. The Tribunal, somehow, by making an observation that the medical bills were concocted and opining that the petitioner might have spent only Rs.10,000/- towards medical expenses, granted the same, which appears to be on lower side. Certainly, it cannot be appreciated for the reason that when the medical officer himself testifies the contents of Exs.A.5 to A.7, the petitioner cannot be deprived of the said amount. Hence, towards medical expenses, a sum of Rs.42,673/-, as evidenced by Ex.A.7, is granted as against Rs.10,000/- granted by the Tribunal. Concerning grievous injury sustained by the petitioner, since both bones of right leg were fractured, the amount of Rs.10,000/- granted by the Tribunal towards pain and suffering and injury proper, is enhanced to Rs.30,000/-. Towards simple injuries, at the rate of Rs.1,000/- per each injury granted by the Tribunal, the same is enhanced to Rs.3,000/- making a total of Rs.6,000/- for the two simple injuries sustained by the petitioner. Loss of earnings computed by the Tribunal for three months is enhanced to six months, as it would be difficult for any person to regain normalcy before the expiry of six months as one of the main limbs was affected and, therefore, the same is

doubled enhancing it to Rs.25,800/- as against Rs.12,900/- granted by the Tribunal. The Tribunal has not granted any amount towards extra nourishment. Therefore, a sum of Rs.10,000/- is granted under the said head. Towards attendant charges, a sum of Rs.6,000/- is granted for three months at the rate of Rs.2,000/- per month and towards transport charges, a sum of Rs.2,000/- is granted. Thus, the petitioner is totally entitled to Rs.1,22,473/- rounding it off to Rs.1,22,500/-.

13. Thus, the petitioner is entitled to a total sum of Rs.1,22,500/- (Rupees one lakh twenty two thousand and five hundred) as against Rs.34,900/- granted by the Tribunal towards compensation and the same is accordingly granted. So far as the rate of interest is concerned, the Tribunal granted the same at 9% per annum and the same is maintained on the amount granted by the Tribunal and interest at 7.5% per annum is granted on the enhanced amount of compensation in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**^[3]. The petitioner-appellant is permitted to withdraw the entire amount of compensation.

14. Accordingly, the instant appeal is allowed in part modifying the order passed by the Tribunal, by enhancing the compensation, as indicated above, and confirming the same in all other respects. There shall be

no order as to costs.

15. As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, stand closed.

A. SHANKAR NARAYANA, J

28th March, 2016

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[\[1\]](#) 2003(3) ALD 20

[\[2\]](#) 2001(1) ALT 495 (D.B.)

[\[3\]](#) 2013 ACJ 1403