

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A. C.M.A. No.2679 OF 2005

JUDGMENT:

Dissatisfied with the award of Rs.5,000/- as compensation as against the claim of Rs.2,50,000/- laid under Section 166(1) (a) of the Motor Vehicles Act, 1988 (for short 'the Act'), petitioner preferred this Civil Miscellaneous Appeal against the order and decree, dated 06.04.2005, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - V Additional District Judge, Nizamabad, in O.P. No.171 of 2000, seeking enhancement of compensation.

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 lorry bearing No.TN-28-V-5459 that involved in the accident, are respondent Nos.1 and 2, respectively.

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

4. The facts would show that the petitioner, who is a resident of Pochampad village, was working as Work Inspector of Quality Control Division, Irrigation Department, and drawing a salary of Rs.8,000/- per month apart from earnings on agriculture. While so, on 09.10.1999 at about 7.30 p.m., while he was standing in front of an STD Booth at Balkonda village on Highway No.7, a lorry bearing No.TN-28-V-5459 came from

Nirmal, driven in a rash and negligent manner at high speed and hit him, due to which, he fell down and sustained fracture of his legs and also multiple grievous injuries on his person, and he was immediately shifted to Government Hospital, Balkonda. A rod was inserted in two areas and skin grafting was done. From there, he was shifted to Government Hospital, Nizamabad. Thereafter, he was admitted in a private hospital viz., Pragathi Nursing Home, where Dr. L. Ramulu operated his fractured leg and inserted a rod. He spent Rs.40,000/- towards medical expenses and though, calculated general and special damages, limiting the claim, sought a sum of Rs.2,50,000/- towards compensation in lump sum.

5. Respondent No.1, owner of the lorry bearing No.TN-28-V-5459 involved in the accident, remained *ex parte* before the Tribunal.

6. Respondent No.2, insurer of the lorry involved in the accident, filed counter opposing the claim by raising various grounds and also contending that the driver of the lorry is also a necessary party to the claim petition.

7. The Tribunal, based on the pleadings, framed three (3) issues in order to determine compensation as well as negligence in taking place of the accident.

8. During enquiry, petitioner examined himself as PW.1 besides examining Dr. L. Ramulu as PW.2 and marked Exs.A-1 to A-16. On behalf of the insurer, no oral evidence was adduced except marking a photostat copy of the insurance policy of the

lorry involved in the accident as Ex.B-1.

9. The Tribunal, on appraisal of the evidence on record, held issue No.1 in favour of the petitioner. On issue No.2, disbelieving the evidence of PW.2 and Ex.A-12 disability certificate issued by him, taking into consideration Ex.A-3, certified copy of wound certificate issued by the Government Hospital, Balkonda, and, since the injuries mentioned therein were not proved by examining the doctor, who issued the same, and not summoned the doctor from the Government Hospital, Nizamabad, where he said to have taken treatment, treated the injuries sustained by the petitioner as simple in nature and, accordingly, granted Rs.5,000/- towards compensation with interest at 9% per annum.

10. It is the aforesaid order, which is under challenge in the instant appeal contending that the Tribunal has overlooked the disability certificate without assigning proper reasons, though, it is not mandatory to examine the doctor, more particularly, who has issued the medical certificate, the Tribunal has not granted any amount towards transportation, treatment, extra-nourishment, attendant's charges and lodging etc., and, though, the petitioner sustained grievous injuries, the Tribunal has treated them as simple injuries merely because the doctor was not examined.

11. Heard Sri K. Sarala Mahender Reddy, learned counsel for the petitioner (appellant).

12. Despite service of notice, none appears for both the

respondents, owner and insurer, respectively, of the lorry involved in the accident.

13. Perused the order under challenge and the evidence on record.

14(a) The finding of the Tribunal in discarding Ex.A-12 disability certificate issued by Dr. L. Ramulu and his evidence cannot be interfered with for the reason that he (PW.2) was in the habit of issuing fake medical and disability certificates and even comments were made against him by this Court, which are unnecessary to advert to.

(b) However, the Tribunal, somehow, went wrong in properly examining Ex.A-3 injury certificate issued by Civil Assistant Surgeon of Government Hospital, Balkonda, and also Ex.A-2 charge sheet filed by the concerned showing that the offence levelled against the lorry driver was registered under Section 338 IPC indicating that grievous injury was sustained by the petitioner. The description of injuries in Ex.A-3 is thus:

"(1) Lacerated wound Blunt	4" x ½"	Medial side of the lower end of the Rt leg placed long (not legible)	Grievous	
(2) Contusion wound -	3" x ½"	Anatomy surface of the left leg reddish lower end placed long (not legible) in colour	-	do

Case was ref. to district head Quarters Hospital Arthopedic side

Received from

Surgeon.

	The Expert opinion	
Sd/-	fracture of Rt leg	
Civil Asst. Surgeon	(Compound)	Govt
Civil Hospital	fractures of left leg	
Balkonda	Clavicle bones	NZB.”

(c) The opinion of the expert would show that there is compound fracture of right leg and fracture of left leg clavicle bones. No doubt, the doctor was not examined. But, Ex.A-3 certified copy of injury certificate issued by the Civil Assistant Surgeon, Government Hospital, Balkonda, coupled with the contents of Ex.A-2 chargesheet, when viewed, certainly, Ex.A-3 has to be taken into consideration. When the disability is not forthcoming as mentioned in Ex.A-3 injuries, compensation has to be awarded accordingly.

(e) As regards first injury, a sum of Rs.25,000/- is granted and for the second injury, a sum of Rs.30,000/- is granted since clavicle bones fracture is involved. Besides the same, a sum of Rs.20,000/- towards pain and suffering and Rs.5,000/- towards extra-nourishment are granted. Since salary certificate was showing monthly salary of the petitioner as Rs.6,064/-, a sum of Rs.12,000/- is granted towards loss of temporary earnings for two (2) months at Rs.6,000/- per month. Besides the same, a sum of Rs.3,000/- is granted towards transport charges and a sum of Rs.6,000/- towards attendant charges.

15. Thus, the petitioner is entitled to a total compensation of Rs.1,01,000/- (Rupees one lakh one thousand only) as against Rs.5,000/- awarded by the Tribunal, and the same is

accordingly awarded. However, the petitioner is entitled to interest at 9% per annum on the compensation granted by the Tribunal, but, on the enhanced compensation at 7.5% per annum, in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**^[1], from the date of petition till realisation.

16. Accordingly, the Civil Miscellaneous Appeal is allowed in part modifying the impugned order 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

March 11, 2016.

PV

^[1] 2013ACJ1403 = 2013(4)ALT35