

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.3179 OF 2005

JUDGMENT:

Having got dissatisfied with the award of Rs.17,000/- as compensation by the order dated 02.09.2004 in O.P. No.720 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-V Additional District Judge (Fast Track Court), Ranga Reddy District at L.B.Nagar (for short, 'the Tribunal') as against the claim of Rs.1,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') for the injuries sustained by the appellant-petitioner 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 and 2 herein, who are owner and insurer of the auto trolley bearing registration No.AP 13U 6841, are respondent Nos.1 and 2, 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 the petitioner was working as Operator in H.P.C.L. in Cherlapally, Hyderabad, drawing monthly salary of Rs.7,000/- and on

30.06.2001 at about 2-00 p.m., he was proceeding on his Hero Honda Splendor motorcycle bearing registration No.AP 28A 6995 from H.P.C.L. plant to J.J.Nagar Colony and when he reached Surana Factory in Cherlapally, an auto trolley bearing registration No.AP 13U 6841 driven in a rash and negligent manner at high speed dashed him, due to which, he fell down and sustained multiple fracture injuries all over his person including dislocation of right clavicle, fracture to fifth metacarpal (right), soft tissue injury to right knee and he was shifted to Apollo Hospital, where he was treated as inpatient. Kushaiguda police also registered a case in Crime No.228 of 2001 against the driver of the auto trolley. Therefore, he laid claim of Rs.1,00,000/- under Section 166 of the Act against respondent Nos.1 and 2, who are owner and insurer of the accident vehicle.

5. Respondent No.1 remained *ex parte*. Respondent No.2 opposed the claim raising various pleas. A specific plea was raised that there is contributory negligence of the petitioner in taking place of the accident.

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 marking Exs.A.1 to A.6 to substantiate his claim; whereas, on behalf of respondent No.2- Insurance Company, R.Ws.1 and 2 were examined and

Exs.B.1 and C.1 were marked on consent.

7. On appraisal of evidence on record, the Tribunal held issue No.1 in favour of the petitioner. On issue No.2, the Tribunal noting the injuries sustained by the petitioner, as projected in Ex.A.3, which is copy of M.L.C. issued by Apollo Hospital and Ex.A.4-discharge summary, granted Rs.5,000/- each for two grievous injuries, Rs.1,500/- for simple injury, Rs.5,000/- towards medical expenses and Rs.500/- towards transportation and extra nourishment, making a total of Rs.17,000/- with interest at 9% per annum. However, dismissing the claim petition against respondent No.2-insurer by elaborately discussing the evidence of R.Ws.1 and 2.

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 despite sustaining two fractures, the amount granted by the Tribunal was very low and the Tribunal ought to have granted Rs.32,000/- towards medical expenses despite bills being filed and, therefore, sought to grant the balance amount.

9. No representation for the appellant-petitioner. No representation for respondent No.2-Insurance Company. Appeal was dismissed against respondent No.1-owner for default by the order dated 06.01.2012. However, dismissal of the appeal for default against

respondent No.1-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**^[1].

10. As could be seen, the following injuries were described in Ex.A.3:

- "1. Acromioclavicular dislocation right (near shoulder).
2. Fracture of fifth metacarpal right.
3. Soft tissue injury to right knee."

The petitioner admittedly was treated in Apollo Hospital as per Ex.A.4-discharge summary issued by the said hospital and the Tribunal granted Rs.5,000/- each towards grievous injuries. Certainly, when kept in view, the first injury is Acromio clavicular dislocation right near shoulder, the petitioner is entitled to a sum of Rs.20,000/- towards injury and pain and suffering. For the fracture of fifth metacarpal right, the petitioner is entitled to another sum of Rs.15,000/- including pain and suffering. For the simple injury, he is entitled to Rs.3,000/- as against Rs.1,500/- granted by the Tribunal. Towards medical expenses, a sum of Rs.5,000/- was granted by the Tribunal and the same is confirmed as no medical bills are forthcoming. Towards transport charges, the Tribunal has granted Rs.500/- and the same is enhanced to Rs.2,000/-.

Towards extra nourishment, no amount is granted by the Tribunal. Keeping in view, the petitioner sustained two grievous injuries, a sum of Rs.10,000/- is granted towards extra nourishment. Towards temporary loss of earnings, no amount is granted. As could be seen from the record, the petitioner must have availed even medical leave. Even otherwise, for a period of two months, a sum of Rs.27,000/- is granted, since the petitioner is drawing net salary of Rs.13,557-27 as shown in Ex.A.6-salary slip.

11. Turning to the ground that the Tribunal was not right in dismissing the claim petition against respondent No.2-Insurance Company, the finding recorded by the Tribunal that the photograph of Nagaraju on the licence was removed by his brother, Ramesh and affixed his photograph, is well reasoned, based on appreciation of evidence and, therefore, does not warrant interference. Hence, that finding recorded by the Tribunal is confirmed.

12. Thus, the petitioner is entitled to a total sum of Rs.82,000/- (Rupees eighty two thousand) as against Rs.17,000/- 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**^[2].

13. 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.

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

A. SHANKAR NARAYANA, J

30th March, 2016

siva

^[1] 2001(1) ALT 495 (D.B.)

^[2] 2013 ACJ 1403