

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA
MACMA.No.2335 of 2005

JUDGMENT:

Feeling dissatisfied with the award of Rs.1,50,915/- as compensation, as against the claim of Rs.6,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), the petitioner preferred the instant appeal challenging the order dated 07.10.2004 in O.P.No.410 of 1998 on the file of the Chairman, Motor Accident Claims Tribunal-cum-District Judge, Nizamabad (for short, 'the Tribunal'), seeking enhancement of compensation.

2. The appellant herein is the petitioner, while respondent Nos.1 & 2, herein, who are the owner and insurer of the jeep bearing registration No. MH- 26/4653, respectively, were respondent Nos.1 & 2, respectively, in the original petition.

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

4. The facts in brief are that on 29.04.1998, when the petitioner was travelling in a jeep bearing registration No.MH-26/4653 from Nigwada Village towards Kadli Village and reached Rampur Village bus stand on Nirmal to Dilawarpur road, the driver of the jeep drove it in

rash and negligent manner and lost control over it, due to which, it turned upside down resulting fracture to both legs of the petitioner and other injuries to his skull and left hand and he was admitted in Government Hospital, Nirmal and thereafter he was shifted to Government Headquarters Hospital, Nizamabad, where he has undergone surgical interventions thrice and steel rods were inserted. The petitioner claims that he has incurred Rs.1,00,000/- towards treatment and he has to undergo further operations. He is an agriculturist earning Rs.6,000/- per month and due to injuries sustained by him in the said accident, he is unable to move out of the bed and, therefore, sought compensation of Rs.6,00,000/- as he sustained permanent disability.

5. Respondent No.1-owner of the accident vehicle remained *ex parte* before the Tribunal. Respondent No.2-insurer opposed the claim contending that the petitioner was travelling as an unauthorised passenger in the jeep and the compensation claimed was excessive and, thereby, sought to dismiss the claim petition.

6. Basing on the said pleadings, the Tribunal framed three issues. During enquiry, the petitioner examined himself as P.W.1, besides examining Dr. R.

Bhupathi Reddy as P.W.2, and marked Exs.A1 to A10, besides getting marked Exs.C1 and C2 through P.W.2, to substantiate his claim; whereas, on behalf of respondent No.2, no witnesses were examined and no documents were marked.

7. The Tribunal, on appraisal of evidence let in by the petitioners, recorded a finding that due to rash and negligent driving of the driver of the jeep, the accident had occurred and, thus, held issue No.1 in favour of the petitioner. On issue Nos.2 & 3, the Tribunal believed the evidence of P.W.2, but did not accept the Disability Certificate issued by him and marked as Ex.C1, and basing on Ex.A3 - certified copy of the wound certificate, wherein the injuries were described as pain, swelling and deformity on right thigh with fracture femur, pain, swelling left thigh with fracture femur, multiple abrasions on left knee joint and multiple abrasions on both foot dorsum, awarded Rs.75,000/- towards disability, Rs.25,000/- towards pain and suffering, Rs.32,915/- towards medical expenses basing on entries in Exs.A5 and A6 and Rs.18,000/- towards loss of earnings, and thus, a total compensation of Rs.1,50,915/- was granted making both the respondents liable to pay the same with interest at 9% per annum from the date of petition till realisation.

8. On the ground that meager compensation was awarded by the Tribunal, the instant appeal is preferred by the petitioner contending in the grounds that the Tribunal was not right in excluding Ex.C1 - Disability Certificate, despite the fact that there is shortening of his lower limb and he has undergone operations, and even the amount awarded towards loss of earnings for six months is improper, as he has suffered for a period of one year, and the Tribunal also did not award any amount towards attendant charges, extra nourishment and transport charges. It is also stated that the Tribunal ought to have granted the rate of interest at 12% per annum and, thus, sought to grant the balance amount.

9. Heard Sri P.Radhive Reddy, learned counsel for the appellant, and Sri Kota Subba Rao, learned Standing Counsel for respondent No.2.

10. The instant appeal was dismissed for default against respondent No.1 by order dated 05.01.2012, but the said dismissal is of no consequence to decide the controversy in the instant appeal, as respondent No.1-owner of the accident vehicle suffered decree by remaining *ex parte* before the Tribunal.

11. Perused the order under challenge and evidence on record both, oral and documentary, let in by

the petitioner. There are clear findings recorded by the Tribunal that the petitioner sustained two fracture injuries on vital parts of his person, that being right femur and left femur, and he has undergone plastic surgery, besides undergoing operations between April, 1998 and August, 1999, and was bedridden for more than one year as per the medical records. Despite recording these definite findings, the Tribunal granted an amount of Rs.18,000/- towards loss of earnings, computing for a period of six months.

12. When kept in view, that the petitioner had to suffer for more than a year for healing of fracture injuries sustained by him and even the evidence of PW.2 shows that the petitioner sustained deformity of right thigh, stiffness of hip and knee, shortened lift and hip stiffness, certainly an amount of Rs.75,000/- granted by the Tribunal towards disability requires enhancement and, therefore, it is enhanced to Rs.1,00,000/-. Towards pain and suffering, an amount of Rs.25,000/- granted by the Tribunal, is enhanced to Rs.35,000/-. An amount of Rs.32,915/- granted by the Tribunal towards medical expenses basing on Exs.A5 and A6 is maintained. Towards loss of earnings, an amount of Rs.18,000/- granted by the Tribunal is enhanced to Rs.32,000/-.

13. The Tribunal has not granted any amount towards attendant charges, though it has recorded a finding that the petitioner was bedridden for a considerable period, and keeping in view the same, the petitioner is granted a sum of Rs.12,000/- towards attendant charges. Towards extra nourishment, a sum of Rs.15,000/- is granted, keeping in view the suffering undergone by the petitioner. Towards transport charges, a sum of Rs.5,000/- is granted. Thus, the compensation of Rs.1,50,915/- granted by the Tribunal is enhanced to Rs.2,31,915/- (Rupees two lakhs thirty one thousand nine hundred and fifteen).

14. 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 compensation of Rs.1,50,915/- granted by the Tribunal. However, on the enhanced amount of Rs.81,000/-, interest at 7.5% per annum is granted 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].

15. Accordingly, the instant appeal is allowed in part modifying the order passed by the Tribunal, by enhancing the compensation with interest, as indicated above, and confirming the same in all other respects.

There shall be no order as to costs.

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

**JUSTICE A.SHANKAR
NARAYANA**

09.02.2016
v v

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