

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1539 OF 2005

JUDGMENT:

Having got dissatisfied with the award of Rs.27,500/- as compensation by the order dated 06.10.2004 in O.P. No.1002 of 1999 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Nizamabad (for short, 'the Tribunal') as against the claim of Rs.2,00,000/- laid under Section 166(1)(a) 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 to 3 herein, who are driver, Depot Manager of Kurnool Depot and the Managing Director of Andhra Pradesh State Road Transport Corporation, Musheerabad, Hyderabad (Corporation), 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 08.11.1998, the petitioner along with his friend was proceeding on scooter bearing registration No.AP 25A 6941 from Armour to

Nizamabad and when they reached near Dhobi Ghat at about 6-00 p.m., an RTC bus bearing registration No.AEZ 1751 belonging to Korutla Depot, driven by respondent No.1 in a rash and negligent manner at high speed, came and dashed the scooter, due to which, the petitioner fell down and sustained fracture to his collar bone, ribs and other injuries all over his person and he was shifted to Government Hospital, Armoor and, thereafter, he was shifted to Tirumala Orthopaedic Hospital, Nizamabad, where he was treated by Dr. Bhupathi Reddy and incurred Rs.30,000/- towards medical expenditure. Hence, he claimed Rs.2,00,000/- as compensation from respondent Nos.1 to 3, who are the driver, Depot Manager of Korutla Depot and the Managing Director of Corporation.

5. Common written statement was filed by respondent Nos.1 to 3 opposing the claim attributing rash and negligent driving to the petitioner, on account of which, the accident had occurred and, therefore, sought to dismiss the claim petition.

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.20 to substantiate his claim; whereas, on behalf of the respondent-Corporation, no witnesses were examined and no documents were filed.

7. On appraisal of evidence on record, the Tribunal held issue No.1 in favour of the petitioner. On issue No.2, the Tribunal, basing on the evidence of P.W.2 and observing that he was not a stock witness, taken into consideration Ex.A.3-medical certificate and the injuries sustained by the petitioner and awarded Rs.26,000/- towards injuries, Rs.5,000/- towards pain and suffering and Rs.2,500/- towards medical expenses and, thus, arrived at a total sum of Rs.33,500/-, but again discussing in paragraph No.11, arrived at the finding that the petitioner contributed to the accident and, thereby, deducted Rs.6,000/- and, thus, a total sum of Rs.27,500/- was granted towards compensation with interest at 9% per annum.

8. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that despite cogent evidence through Medical Officer and the documents showing that the petitioner sustained grievous injuries, the Tribunal, somehow, over looked the same and granted a meager compensation and, therefore, sought to grant balance amount.

9. Heard Sri K.M. Mahender Reddy, learned counsel for the appellant. There was an endorsement in the cause title of the grounds of appeal that respondent No.1-driver is not a necessary party. Despite service of notice on respondent Nos.2 and 3, none appears for

them.

10. Perused the order and the evidence on record, both, oral and documentary, let in by the petitioner. The medical evidence through P.W.2 would show that there was dislocation of right shoulder, fracture of right ribs as per Ex.A.3 and, on examination of P.W.1, he found fracture of right side ribs and acromioclavicular dislocation of right side and also superficial laceration on right hand 4" x 1" sutured wound on right forearm and all the said injuries are grievous in nature. Of course, even according to the finding recorded by the Tribunal, the evidence of P.W.2 stood un-impeached and even convincing, but somehow, the Tribunal proceeded to grant the amount as meager amount not in tune with the suffering undergone by the petitioner by sustaining the said grievous injuries. The Tribunal has granted Rs.10,000/- for the fracture of ribs. It is no doubt true, nothing is forthcoming as to how many right ribs were broken. Be that as it may, the amount of Rs.10,000/- granted by the Tribunal towards fracture of ribs is enhanced to Rs.20,000/-. The Tribunal has granted Rs.12,000/- for dislocation of acromio clavicle and dislocation of right side. The same is also enhanced to Rs.20,000/-. The amount of Rs.4,000/- granted by the Tribunal towards two simple injuries is enhanced to Rs.6,000/-. The Tribunal has granted Rs.5,000/- towards pain and suffering, despite the fact that the petitioner

sustained great inconvenience on account of the fracture referred to above. Therefore, it is enhanced to Rs.15,000/-. Towards medical expenses, the Tribunal has granted only Rs.2,500/-. The evidence of P.W.2 would clinchingly show that the petitioner has spent Rs.30,000/-. However, since he has undergone treatment in P.W.2's hospital and the documentary evidence supports the same, the amount of Rs.2,500/- granted by the Tribunal towards medical expenditure is enhanced to Rs.10,000/-. Towards extra nourishment, no amount is granted by the Tribunal. Therefore, a sum of Rs.5,000/- is granted under the said head. Towards transport and attendant charges, a sum of Rs.2,000/- and Rs.5,000/- are granted respectively, as the Tribunal has not granted any amount under the said heads. The Tribunal has observed that leave availment certificate was not produced by the petitioner and, thereby, no amount was granted towards loss of earnings. Be that as it may, the petitioner was working as Sub Inspector of Police and grievous injuries were sustained by him in the accident, certainly, he would have gone on leave at least for three months and at the rate of Rs.6,000/- per month, he is entitled to Rs.18,000/- towards loss of earnings. The finding recorded by the Tribunal towards contributory negligence and deducting Rs.6,000/- is without any basis. No documentary evidence was discussed as to how that finding was arrived at by the Tribunal. Therefore, the same is

withheld.

11. Thus, the petitioner is entitled to a total sum of Rs.1,01,000/- (Rupees one lakh and one thousand) as against Rs.27,500/- 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 Rs.73,500/-, in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**^[1].

12. 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.

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

A. SHANKAR NARAYANA, J

7th April, 2016

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