

**HONOURABLE SRI JUSTICE A. SHANKAR  
NARAYANA**

**M.A. C.M.A. No.1523 OF 2005**

**JUDGMENT:**

Feeling dissatisfied with the award of Rs.1,26,000/- as compensation by the order and decree, dated 30.12.2003, in

O.P. No.1248 of 2000 passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - Chief Judge, City Civil Court, Hyderabad, as against the claim of Rs.3,80,000/- laid under Section 166 of the Motor Vehicles Act 1988, the instant appeal is preferred by the petitioner seeking enhancement of compensation.

2. The appellant herein is the petitioner in the O.P. before the Tribunal, while respondent Nos.1 to 3, who are driver, owner and insurer, respectively, of the lorry bearing No.AP-9-U-7488 that involved in the accident, are respondent Nos.1 to 3 respectively.

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

4. The facts would show that on 7.7.1999 at about 6.00 p.m., while the petitioner was riding pillion along with her husband on the Scooter bearing No.AP-28-B-4469

towards Santhosh Nagar from L.B. Nagar Ring Road and reached L.B. Nagar cross-roads, lorry bearing No.AP-9-U-7488 driven by its driver in a rash and negligent manner at high speed, hit the scooter from behind, due to which, the petitioner and her husband fell down and the petitioner sustained head injury and other injuries to her person. She was immediately shifted to Kamineni Hospital. A case was registered in Crime No.273 of 1999 by the Station House Officer, L.B. Nagar Police Station, against the lorry driver.

5. Respondent No.1, driver of the lorry that involved in the accident, remained *ex parte*.

6. Respondent Nos.2 and 3, owner and insurer of the lorry, filed separate counters opposing various allegations made against them in 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, the petitioner, besides examining herself as PW.1, examined her husband as PW.2 and Dr.R.T.S. Naik, Neuro Surgeon, who treated her, as PW.3 and marked Exs.A-1 to A-26.

On behalf of the respondents, no witnesses were examined, but a copy of the insurance policy of the lorry

involved in the accident was marked as Ex.B-1 on consent.

9. On issue No.1, the Tribunal, on appraisal of evidence on record, recorded a finding in favour of the petitioner. On issue No.2, while dealing with the special damages, the Tribunal, having noted the amounts mentioned in the discharge summary issued by Kamineni Hospital, granted Rs.50,556/- towards hospital charges, Rs.1,000/- towards transport charges, and Rs.5,000/- towards loss of temporary earnings, as the petitioner is a graduate, making a total of Rs.61,000/- towards special damages.

10. While dealing with general damages, the Tribunal granted Rs.15,000/- towards pain and suffering and based on Ex.A-26 and the evidence of PW.3, observing that the petitioner had undergone surgical intervention for the injury and the doctors removed the blood clots in the brain and there was a left lobe on the injury because of the injury to the left lobe, memory and speech of the petitioner have been affected and it is difficult for her to recognize persons immediately and express clearly, granted Rs.50,000/- towards disability, and, thus awarded a total sum of Rs.1,26,000/- towards compensation with interest at 12% per annum

11. It is the aforesaid order, which is sought to be

modified in the direction of seeking enhancement of compensation contending in the grounds that the Tribunal has not considered pain and agony suffered by the petitioner and granted a meagre amount of Rs.15,000/- towards pain and suffering despite the evidence of PW.3 and that the Tribunal has not appreciated the fact that the petitioner is suffering from continuing disability and that the Tribunal has not awarded any amount on account of future earning power and, therefore, sought to grant the balance amount.

12. Heard Sri Akella Srinivasa Rao, learned counsel for the petitioner (appellant), and Sri P. Panduranga Rao, learned counsel for respondent No.3.

13. Despite service of notice, there is no representation for respondent No.2, owner of the lorry involved in the accident, though made appearance.

14. The instant appeal was dismissed for default against respondent No.1, driver of the lorry, by the order, dated 03.01.2012, passed by this Court, and the same is of any consequence to adjudicate upon the request herein for enhancement.

15. Learned counsel for the petitioner would submit that the Tribunal has not properly assessed the evidence of PW.3 and post operative difficulties for the surgeries she had undergone having engaged physiotherapists,

permanent loss of memory power on account of injury to left lobe as spoken to by PW.3 and, therefore, sought to grant the balance amount.

16. Learned counsel for respondent No.3 would submit that the Tribunal has taken every aspect into consideration and, therefore, does not warrant any modification in the direction of enhancement of compensation.

17. Perused the evidence on record both, oral and documentary. The evidence of PW.3, Dr. R.T.S. Naik, Neuro Surgeon, then working in Kamineni Hospital, Hyderabad, is material to examine whether the petitioner is entitled to enhancement of compensation, in other words the amount granted by the Tribunal is just and adequate?

18. His evidence would show that when the petitioner was admitted, bleeding was found from the right ear and also nostril and when they operated her head injury after taking C.T. scan and other investigations, they opened her skull and surgery was done on left temporal bone of the brain and there were blood clots, which were removed, and PW.1 thus, gradually improved and hence, discharged on 20.07.1999. His evidence also shows that but for the timely treatment, the petitioner would not have survived and she was under severe pain and shock at the

time of admission and because of the injury to the left lobe, memory and speech of the petitioner have been affected and it is difficult for her to identify persons immediately and express clearly; certainly, this aspect spoken to by PW.3 were left undisturbed in his cross-examination and only it was elicited in his cross-examination that at the time of discharge, condition of the petitioner was stable, which would not give inference that she had attained normalcy after discharge. The post operative effects have been mentioned by the doctor in his chief-examination. When petitioner suffers from difficulty in recognising persons clearly and express is the disability, the said disability would account for continuing disability, for which the Tribunal has granted Rs.50,000/- without properly comprehending the continuing effect. It has come on record that the petitioner was a graduate. Though, the Tribunal has not recorded any definite finding that she was an earning member, still, being graduate, she must be undertaking tuitions. Even otherwise, her domestic services cannot be ignored including the social life. Thus, these factors when kept in view, the amount of Rs.15,000/- granted towards pain and suffering is certainly meagre and, therefore, the same is enhanced to Rs.50,000/-. Concerning post operative effects and continuing disability with which petitioner has to face and the difficulty in recognising persons clearly and expressing clearly because her speech and memory were

effected, with which she has to continue for rest of the life, the amount of Rs.50,000/- granted by the Tribunal, it would be reasonable to enhance the same to Rs.1,00,000/-.

19. The other sums of Rs.5,000/- towards loss of earnings, Rs.1,000/- towards transport charges and Rs.55,000/- towards medicines and extra-nourishment, granted by the Tribunal are maintained.

20. Thus, the petitioner is entitled to a total compensation of Rs.2,11,000/- (Rupees two lakhs eleven thousand only) as against Rs.1,26,000 awarded by the Tribunal, and the same is accordingly awarded. However, the rate of interest granted by the Tribunal at 12% per annum is maintained on the amount of Rs.1,26,000/- granted by the Tribunal, but, on the enhanced amount it is granted 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**<sup>[1]</sup>, from the date of petition till realisation.

21. 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.

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**A. SHANKAR NARAYANA, J**

**April 1, 2016.**

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[\[1\]](#) 2013ACJ1403 = 2013(4)ALT35