

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1113 OF 2005

JUDGMENT:

The United India Insurance Company Limited, represented by its Branch Manager, Sangareddy, Medak District, which is respondent No.2 in O.P. No.219 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, Medak at Sangareddy (for short, 'the Tribunal'), aggrieved by the order dated 02.09.2004, whereby and whereunder, the Tribunal awarded a sum of Rs.86,500/- with interest at 9% per annum as against the claim of Rs.1,50,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') for the injuries sustained by the petitioner in a road accident, preferred the instant appeal under Section 173 of the Act on the ground that the compensation granted by the Tribunal is excessive.

2. The appellant herein is respondent No.2, while respondent No.1 herein is the petitioner, respondent No.2 herein, who is the owner of the auto rickshaw bearing registration No.AP 23T 7022, is respondent No.1, 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 15.02.2001 at about 6-00 a.m., while the petitioner along with his son and other passengers was travelling in an auto bearing registration No.AP 23T 7022 to go to Sangareddy, since the driver of the auto rickshaw drove it in a rash and negligent manner at high speed, when it reached in front of TTD Kalyana Mandapam, it turned upside down, due to which, the petitioner sustained fracture to his right hand. Concerned police also registered a case in Crime No.19 of 2001 against the driver of auto rickshaw. The petitioner, therefore, sought to grant a sum of Rs.1,50,000/- under Section 166 of the Act.

5. Respondent No.1-owner of the accident vehicle filed counter resisting the claim, however, pleaded that the vehicle was insured with respondent No.2 and, therefore, to dismiss the claim petition. Respondent No.2-insurer filed counter raising various pleas including collusion between the petitioner and the owner of the vehicle.

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.7; whereas, on behalf of respondent No.2, no witnesses were examined, but copy of insurance policy was marked as Ex.B.1 on consent.

7. On appraisal of evidence on record, both, oral and documentary, let in by the petitioner, the Tribunal held issue No.1 in favour of the petitioner. On issue No.2, the Tribunal has placed reliance on a decision of this Court in **D.Swarnalatha and others v. I.S.Rasool Saheb and another**^[1] and keeping in view that the petitioner sustained fracture of both bones of his right hand, granted Rs.40,000/- for fracture of both bones, Rs.10,000/- towards shock, pain and suffering including loss of amenities of life, Rs.9,000/- for other injuries, Rs.22,500/- towards loss of earnings at the rate of Rs.7,500/- per month for three months and Rs.5,000/- towards other incidental charges including transportation, extra nourishment, etc., making a total sum of Rs.86,500/- 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 the amount awarded by the Tribunal as compensation is highly excessive and even the rate of interest at 9% per annum awarded by the Tribunal is exorbitant when compared with the interest given by the nationalized banks on term deposits, and, hence, sought to modify the order and decree under challenge.

9. Heard Smt. V. Durga, learned Standing Counsel for the appellant (respondent No.2-Insurance Company), and Sri Palle Sriharinath, learned counsel for

respondent No.1-petitioner. The service on respondent No.2-owner (respondent No.1) treated as served by this Court by recording the same on 03.01.2012, but none appears for him.

10. Perused the order and decree and the evidence on record. The amount of Rs.40,000/- granted by the Tribunal towards fracture of both bones cannot be disturbed for the reason that both bones of right hand were fractured putting the petitioner to greater inconvenience for atleast quite long period. Even the amount of Rs.10,000/- granted by the Tribunal towards shock, pain and suffering including loss of amenities of life is reasonable and the same is also maintained. The other amounts of Rs.9,000/- towards other injuries and Rs.22,500/- towards loss of earnings granted by the Tribunal cannot also be disturbed. The amount of Rs.5,000/- granted by the Tribunal towards incidental charges including transportation, extra-nourishment, etc., cannot also be construed as on higher side and excessive. Therefore, there is absolutely no merit in the appeal. So far as the rate of interest is concerned, the Tribunal granted the same at 9% per annum and the same is reduced to 7.5% on the entire amount of compensation in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**^[2].

11. Accordingly, the instant appeal is allowed in part modifying the order passed by the Tribunal, by reducing the rate of interest, as indicated above, and confirming the same in all other respects. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

1st April, 2016

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[\[1\]](#) 1997(1) ALD 681

[\[2\]](#) 2013 ACJ 1403