

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

MACMA No. 1696 of 2005

Judgment:

The instant appeal is preferred by the petitioner – claimant seeking enhancement of compensation not satisfied with the award of Rs.28,500/- as compensation granted by the order, dated 02.11.2004, in OP No. 2658 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal-cum–XI Additional Chief Judge, City Civil Court-cum-Fast Track Court, Hyderabad, as against the claim of Rs.1,50,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the Original Petition before the Tribunal.

3. The facts, in brief, are that, on 07.03.2001, at about 3.00 PM, the petitioner along with children proceeding in a School Van bearing registration No.AP-25T-881 from Shadnagar to Maria Rani School and, when it reached telephone exchange on National Highway No.7, an RTC bus bearing registration No.AP-10Z-9857, coming in the opposite direction driven at high speed in a rash and negligent manner, dashed the Van, while trying to overtake another vehicle, despite the driver of the Van taking the Van to the extreme right side of the road, due to which, the petitioner sustained injuries and the Van was also damaged. He states that he was treated in Osmania General Hospital, Tilaknagar Hospital, CDR Hospital and Srinivasa Nursing Home at Shadnagar and, thus, claimed Rs.1,50,000/- as compensation under various heads.

4. Before the Tribunal, the respondents resisted the claim by filing counter.

5. The Tribunal, based on the pleadings placed before it, framed three issues in order to fix the responsibility for the accident.

6. During enquiry, the petitioner examined himself as PW.1 besides examining Dr. G. Subhash Rao as PW.2 and marked Exs.A1 to A15. On behalf of the respondents no witnesses were examined and no documents were filed.

7. The Tribunal, on issue No.1, recorded a finding in favour of the petitioner. On issue No.2, basing on the charge sheet filed by the Investigating Officer, showing the offence punishable under Section 337 IPC, and also, in view of the fact that, the petitioner failed to examine the concerned Medical Officers of the Hospitals and, opining that the evidence of Dr. G. Subhash Rao, who issued disability certificate, contradicts the evidence of Dr. K. Viswanath of Government Hospital, Shadnagar, which is to the effect that the petitioner sustained simple injuries, granted total compensation of Rs.28,500/- with interest at 9% p.a.

8. It is the aforesaid order which is under challenge in the instant appeal on the ground that the Tribunal has not properly appreciated the evidence on record and granted very meagre compensation under various heads.

9. Heard Sri M. Vijay Reddy, learned counsel for the appellant, and Sri N. Vasudeva Reddy, learned Standing Counsel for the respondents – APSRTC.

10. Perused the order under challenge and the evidence on record. The short question that arises for consideration is whether the petitioner sustained simple injuries or grievous injuries?

11. It is no doubt true the wound certificate – Ex.A3, issued by the Medical Officer, Shadnagar, on 07.03.2001, would show that the

petitioner sustained simple injuries, but the fact that the petitioner was referred to Osmania General Hospital, where he was treated for one day, is not taken into consideration by the Tribunal. Besides the same, the Tribunal appears to have, somehow, overlooked the answer given by PW.2 in his cross-examination denying the suggestion that PW.1 sustained a simple fracture, but no disability with the said fracture. In that view of the matter, it has to be construed that PW.1 sustained grievous injuries; they being (1) fracture of right scapula and (2) anterior bartons fracture of left wrist. The petitioner has also submitted x-rays numbering '8' marked as Ex.A11. However, the disability spoken to by PW.2 can be excluded for the reason, PW.2 is not a competent authority to issue disability certificate, as there would be relevant Medical Board constituted at the district level in each district. Perhaps, that may be the reason, learned Counsel for the respondents – APSRTC before the Tribunal suggested to PW.2 that the fractures were simple fractures.

12. Be that as it may, when kept in view, the petitioner sustained two fractures as described in the above, the petitioner is entitled to Rs.40,000/- towards the injuries and pain and suffering together. The petitioner is also entitled to a sum of Rs.10,000/- towards extra nourishment. Towards loss of temporary earnings, the petitioner is entitled to Rs.6,000/- @ Rs.2,000/- per month. Towards transport charges, the petitioner is also entitled to a sum of Rs.2,000/-. The petitioner submitted medical bills, but he has not examined anybody in connection with the issuance of medical bills to prove the payment of amounts mentioned therein towards purchase of medicines. However, keeping in view, that the petitioner must have spent some amounts, as he sustained two grievous injuries, a sum of Rs.10,000/- is granted. Thus, the petitioner is totally entitled to a sum of Rs.68,000/-, as against Rs.28,500/- granted by the Tribunal, with interest at 7.5% p.a., on the enhanced amount, as per the decision of the Hon'ble Apex

Court in **Rajesh and others v. Rajbir Singh and others**^[1], while maintaining the rate of interest at 9% p.a., granted by the Tribunal on Rs.28,500/-.

13. Accordingly, the MACMA is partly allowed. There shall be no order as to costs.

14. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal shall stand closed.

A. SHANKAR NARAYANA, J

Date: 22.01.2016
Nsr

^[1] 2013 ACJ 1403 = 2013(4) ALT 35