

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.3427 OF 2005

JUDGMENT:

Aggrieved by the order dated 09.06.2005 in O.P. No.179 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-Additional District Judge, Hindupur (for short, 'the Tribunal'), whereby and whereunder, a sum of Rs.15,000/- was granted as compensation as against the claim of Rs.1,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') r/w Rule 455 of the Rules framed thereunder, for the injuries sustained by the appellant-petitioner in a road accident, while dismissing the claim petition against respondent No.2-Insurance Company, the instant appeal is preferred under Section 173 of the Act seeking not only enhancement of compensation but also to set aside the dismissal order against respondent No.2-Insurance Company.

2. The appellant herein is the petitioner, while respondent Nos.1 and 2 herein, who are the owner and insurer of the lorry bearing registration No.AP 02T 6898, respectively, are respondent Nos.1 and 2, 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 05.05.2003, the petitioner, who was working under one V.G.George, tiles merchant, was taken to the house of respondent No.1 for fixing tiles and there were also some labourers in the lorry bearing registration No.AP 02T 6898, since it was driven by its driver in a rash and negligent manner at high speed, the front tyre of the lorry was burst resulting injuries to the petitioner and also others. Petitioner claiming that he was shifted to Government Hospital, Chennethapalli and from there to Government Hospital, Anantapur and treated there as an inpatient for eight days, sought a sum of Rs.1,00,000/- from respondent Nos.1 and 2, who are the owner and insurer of the accident vehicle.

5. Respondent No.1-owner of the accident vehicle remained *ex parte*. Respondent No.2-insurer opposed the claim by taking a specific plea that the petitioner was travelling in the accident vehicle as unauthorized passenger and, therefore, no liability can be fastened on it.

6. Basing on the said pleadings, the Tribunal framed the following issues about the responsibility for the accident:

"1. Whether the accident is the result of rash and Negligent Driving of the driver of the vehicle No.AP 02T 6898 as alleged in the petition?

2. Whether the petitioner is entitled to compensation claimed, if so, to what amount from which of the respondents?

3. To what relief?"

7. During enquiry, the petitioner examined himself as P.W.1 besides marking Exs.A.1 to A.3 to substantiate his claim; whereas, on behalf of respondent No.2-Insurance Company, one G.V.Ramanaiah was examined as R.W.1 and Exs.B.1 and B.2 were marked, which are certified copies of decree in O.P. No.136 of 2003 dated 30.09.2004 and order in O.P. No.136 of 2003 dated 30.09.2004 in respect of the same accident.

8. On appraisal of evidence on record, the Tribunal agreed with the stand of respondent No.2-Insurance Company that the petitioner was unauthorized passenger travelling in the lorry, which was a goods vehicle and, therefore, while determining compensation and fixing liability, dismissed the claim petition against respondent No.2-Insurance Company exonerating it from its liability to indemnify respondent No.1-owner of the lorry. The Tribunal, referred the injuries sustained by the petitioner in paragraph No.8 of the order and, keeping in view, the petitioner sustained fracture of 1/3rd of right femur, granted a total sum of Rs.15,000/- with interest at 6% per annum thereon from the date of petition till realization.

9. It is the aforesaid order which is under challenge in the instant appeal mainly on two grounds; first being the compensation granted by the Tribunal is on lower side despite the fact that the petitioner sustained grievous injury and also the interest and the second being that the dismissal of claim petition against respondent No.2-Insurance Company is incorrect.

10. Heard Sri P.Narahari Babu, learned counsel for the appellant-petitioner. None appears for respondent Nos.1 and 2 despite service of notice.

11. Perused the order and the evidence on record. So far as the dismissal of claim petition against respondent No.2-Insurance Company is concerned, the very fact that the petitioner was travelling in the lorry, though, he claims that he was working under the owner of the goods, does not warrant interference. Concerning the injuries sustained by the petitioner, the petitioner sustained the following injuries:

- "(1) Incised injury over the occipital region size about 2½ x 1/2" bone deep.
- (2) Lacerated injury size about 1/2" x 1" below the right eye.
- (3) "T" shape incised injury over the chin bone deep.
- (4) Lacerated injury of left little finger of left hand.
- (5) Abrasions on both hands and legs.
- (6) Incise injury over right upper eyelid.
- (7) Bleeding injury over both teeth and gums.
- (8) Fracture of 1/3rd right femur."

12. Admittedly, the petitioner sustained one grievous injury, which is fracture of 1/3rd right femur. The Tribunal has not granted any amount under various heads, but granted Rs.15,000/- as global compensation. Keeping in view, that the petitioner sustained six simple injuries and no amount was granted towards extra nourishment, transport charges, etc., the amount of Rs.15,000/- granted by the Tribunal is enhanced to Rs.50,000/-.

13. Thus, the petitioner is entitled to a total sum of Rs.50,000/- (Rupees fifty thousand) as against Rs.15,000/- granted by the Tribunal, towards compensation and the same is accordingly granted against respondent No.1-owner of the accident vehicle. So far as the rate of interest is concerned, the Tribunal granted the same at 6% per annum and the same is enhanced to 7.5% per annum on the entire amount of compensation from the date of petition till date of realization in view of the decision of the Hon'ble Apex Court in **Rajesh and others Vs. Rajbir Singh and others**^[1].

14. 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.

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

A. SHANKAR NARAYANA, J

4th February, 2016

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