

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.1141 OF 2005

JUDGMENT:

The petitioner, having got dissatisfied with the award of Rs.6,000/- as compensation as against the claim of Rs.1,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988, preferred the instant appeal seeking enhancement of compensation by way of modification of the order, dated 17.01.2005, in O.P.No.1132 of 1998 on the file of the Chairman, Motor Accidents Claims Tribunal – cum – District Judge, Nizamabad.

2. The appellant is the petitioner, whereas respondent Nos.1 and 2, who are the owner and insurer of the offending vehicle, are respondent Nos.1 and 2 in the O.P. before the Tribunal.

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

4. The facts in brief are that on 12.02.1998 at about 10:30 PM, the petitioner along with her husband and others boarded a lorry bearing registration No.ADT-2201 at old Bus Stand, Balkonda, to go to Hyderabad and at about 11:00 PM, when the lorry reached Chittapur cross road of Balkonda Village on National Highway No.7, since the driver of the lorry drove it in a rash and negligent

manner, it dashed against a tree, resulting in injuries to the petitioner. The petitioner, claiming that she has been suffering with permanent disability, sought a sum of Rs.1,00,000/- as compensation.

5. Before the Tribunal, respondent No.1 filed counter resisting the claim, but, however, stated that respondent No.2 is liable to pay the compensation as the offending lorry was insured with respondent No.2 and there is obligation on the part of respondent No.2 in indemnifying him.

6. Respondent No.2 filed separate counter taking a specific plea that the petitioner was travelling in the offending lorry as an unauthorised passenger in contravention of the Rules and therefore, sought to dismiss the claim petition against it.

7. Based on the said pleadings, in the direction of accounting for responsibility about the accident, the Tribunal has framed the following three issues:

“1. Whether the accident was due to rash and negligent driving of the driver of the lorry bearing No.ADT-2201?

2. Whether the petitioner is entitled for compensation. If so to what extent and from whom?

3. To what relief?”

8. During enquiry, petitioner examined herself as PW.1 and marked Exs.A1 to A4. On behalf of the

respondents, RW.1 was examined and Ex.B1 was marked.

9. The Tribunal despite holding that the petitioner was an unauthorised passenger travelling in a goods vehicle and referring to the decisions in **National Insurance Company Limited v. Baljit Kaur and others**^[1] and **New India Assurance Company Limited v. Asha Rani**^[2], fastened liability on the Insurance Company having awarded an amount of Rs.6,000/- as compensation treating the injuries sustained by the petitioner as simple in nature.

10. It is the aforesaid order which is under challenge in the instant appeal on the ground that the amount granted by the Tribunal is very meagre and sought to enhance the same by granting the balance amount.

11. Heard Sri M. Rajamalla Reddy, learned counsel for the appellant and Sri Rama Krishna Reddy, learned counsel for respondent No.2. Despite service of notice on respondent No.1, none appears.

12. At the outset, it is to be observed that the Tribunal went wrong in mulcting liability on the Insurance Company despite referring to **Asha Rani's case (supra 2)** and **Baljit Kaur's case (supra 1)** and despite there being specific observation in **Baljit Kaur's case (supra 1)**

that the law laid down in **Asha Rani's case (supra 2)** was prospective in nature. In such an event, the said finding recorded by the Tribunal is incorrect, but there is no challenge to it since the Insurance Company was disabled to prefer an appeal as the amount awarded was only Rs.6,000/-. Be that as it may, of all the injuries mentioned in Ex.A3 – Wound Certificate, extracted at paragraph No.17 of the order under challenge, injuries 2 and 3 are simple in nature and injuries 1 and 4 are grievous in nature. The Tribunal having observed that there is nothing to show how the Medical Officer recorded the opinion that the injuries 1 and 4 are grievous in nature, did not treat them as grievous injuries and taken them as also simple injuries. In fact, the Medical Officer is not examined by PW.1. In such an event, the finding recorded by the Tribunal cannot be upset and therefore, confirming the amount awarded by the Tribunal in the order and decree under challenge, the instant appeal is dismissed. There shall be no order as to costs.

13. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal shall stand disposed of.

A. SHANKAR

NARAYANA, J

April 19, 2016.

MD

[\[1\]](#) 2004 ACJ 428 (SC)

[\[2\]](#) (2003) 2 SCC 223