

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A. C.M.A. No.1147 OF 2009

JUDGMENT:

The instant Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), is preferred by the petitioner, in O.P. No.2431 of 2005, seeking enhancement of compensation on the ground that the amount of Rs.1,06,000/- awarded through the order and decree, dated 15.06.2007, by the learned Chairman, Motor Accidents Claims Tribunal - cum - XII Additional Chief Judge (Fast Track Court), City Civil Court, Hyderabad (for short 'Tribunal'), as against the claim of Rs.2,50,000/- laid under Section 166 of the Act, is very meager compared to the sufferance he has undergone on account of compound fracture of both bones of his right leg, sustained in the road accident caused by the Tata Lorry bearing No.AP-9-W-5901 on 18.05.2005 at about 4.30 p.m., while he was proceeding towards Basheerbagh on his Suzuki Motorcycle bearing No.AP-9-H-6829. According to the petitioner, he was treated in Yashoda hospital as inpatient from 18.05.2005 to 23.05.2005 and spent huge amount towards medical expenses.

2. The appellant herein is petitioner in the O.P. before the Tribunal, while respondent Nos.1 and 2, who are owner and insurer of the Tata Lorry bearing No.AP-9-H-6829 that involved in the accident, are respondent Nos.1 and 2, respectively.

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

4. Respondent No.1, owner of the lorry that involved in the accident, remained *ex parte* before the Tribunal.

5. Respondent No.2, insurer of the lorry, opposed the claim by filing counter.

6. Based on the pleadings, the Tribunal framed three (3) issues in order to fix responsibility in taking place of the accident and to determine compensation, if any, the petitioner is entitled.

7. During enquiry, on behalf of the petitioner, PWs.1 to 3 were examined and Exs.A-1 to A-14 were marked. On behalf of the insurer, except marking a copy of the insurance policy of the lorry involved in the accident as Ex.B-1, no witness was examined.

8. Among PWs.1 to 3, PW.1 is a doctor and he spoke about the injuries sustained by the petitioner and the procedures undergone by him in the hospital during treatment.

9. The Tribunal, having recorded a finding in favour of the petitioner on issue No.1, on issue No.2, placing reliance on the decision of this Court in **U.K. Durgamma v. D. Satyanarayana Raju** [1997 (1) ALD 658] and also the decision of the Punjab and Haryana High Court at Chandigarh in **Krishan Lal v. State of Haryana and others** [2001 ACJ 33], granted Rs.10,000/- towards

shock, pain and suffering, Rs.20,000/- towards injuries and disability based on the nature of injuries and the surgical interventions undergone, Rs.55,000/- towards medical expenses based on the documentary evidence under Exs.A-5 and A-9, Rs.9,000/- towards temporary loss of income, Rs.2,000/- towards transport, food and extra-nourishment, and Rs.10,000/- towards future operation, making a total of Rs.1,06,000/- with interest at 7.5% per annum.

10. In the grounds of appeal, the petitioner pleads that the Tribunal ought to have awarded Rs.25,000/- towards pain and suffering, Rs.25,000/- towards injuries, Rs.1,00,000/- towards disability and thus, granting a total amount of Rs.1,06,000/- towards compensation by the Tribunal is very meager, and, therefore, sought to grant the balance amount.

11. Heard Sri G. Narender Raj, learned counsel for the petitioner (appellant), and Mrs. Bhaskara lakshmi, learned counsel for the insurer (respondent No.2).

12. Since it is endorsed in the cause title of the appeal grounds that respondent No.1, owner of the lorry that involved in the accident, is not a necessary party, no service was effected on him. Further, since he remained *ex parte* before the Tribunal and suffered the decree passed by it, his absence is of no consequence.

13. The short question that arises for determination is whether the compensation granted by the Tribunal is just and adequate or whether the petitioner is entitled to any enhancement of the same?

14. The injuries sustained by the petitioner are fracture of both bones of right leg between ankle and knee. On 18.05.2005, he was admitted in Yashoda Hospital and underwent surgical interventions on the same day and discharged on 23.05.2005 with advice to take bed rest for 6 to 9 months. On this aspect of the case, PW.2 medical officer is examined. Of course, he has admitted that he has not authored Ex.A-5 - medical bills, but, the fact is, that he has testified with regard to the contents of Ex.A-5 being the medical officer from the very same hospital. His evidence also would show that he advised the petitioner to revisit about two and half years later for removal of implants and approximately Rs.25,000/- to Rs.30,000/- is required for removal of implants. That has been the evidence on record of PWs.1 and 2 and the documentary evidence

15. The Tribunal granted Rs.10,000/- towards shock and pain and suffering and Rs.20,000/- towards injuries or in other words construing it as temporary disability, making a total of Rs.30,000/- for the injuries as such. As seen from the evidence of PW.2, both bones of right leg between the ankle and knee of the petitioner were broken and they are reunited by inserting implants which would be there for about two and half years at least, in view of the evidence of PW.2. So, when the same is kept in view, certainly, towards injuries

as well as pain and suffering, a sum of Rs.50,000/- would be reasonable as against Rs.30,000/- (Rs.15,000/-) granted by the Tribunal.

16. The amount of Rs.55,000/- granted towards medical expenses is based on the documentary evidence and, therefore, the same is maintained. Towards loss of income, the Tribunal has computed at Rs.3,000/- per month for three months and granted Rs.9,000/-. But, certainly, the petitioner cannot be expected to attain normalcy within three months, and therefore, keeping in view the evidence of PW.2, the doctor also, the same is doubled, treating it for six months period making it Rs.18,000/- as against Rs.9,000/- granted by the Tribunal.

17. Towards transport, food and extra-nourishment, the Tribunal has granted Rs.2,000/- which, by any stretch of imagination, is on lower side. The petitioner is entitled to Rs.5,000/- towards extra-nourishment, Rs.2,000/- towards transport. Besides the same, the petitioner is also entitled to a sum of Rs.6,000/- towards attendant charges, at least, for a period of three months as he would have required assistance of attendants. The amount of Rs.10,000/- granted by the Tribunal towards future operation, certainly, contrary to what was asserted to by PW.2 which remained unshaken in his cross-examination, as such, it is enhanced to Rs.30,000/-.

18. Thus, the petitioner is totally entitled to Rs.1,66,000/- (Rupees one lakh sixty six thousand only) as against Rs.1,06,000/- granted by the Tribunal and the same is accordingly awarded.

19. The rate of interest at 7.5% per annum granted by the Tribunal is maintained on the entire compensation as it is in accordance with the since the same is in accordance with the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**¹.

20. Accordingly, the Civil Miscellaneous Appeal is allowed in part modifying the order and decree under challenge 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.

A. SHANKAR NARAYANA, J

August 11, 2016.
PV

¹ 2013ACJ1403 = 2013(4)ALT35